No. 78-1789

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ARKANSAS LOUISIANA GAS COMPANY, *Petitioner*,

v.

FRANK J. HALL, W. E. HALL, JR., MRS. W. E. HALL, SR., THE H. M. HARRELL TESTAMENTARY TRUST, JAMES E. HARRELL, JOHN K. HARRELL, SR., ASA BENTON ALLEN, SIDNEY G. MYERS, JR., W. O. COCHRAN, THOMAS F. PHILYAW, MRS. ELAINE ALLEN, JAMES A. NOE, D. B. MCCONNELL, MRS. EVA L. WEISS, SOL KAPLAN and NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS, *Respondents*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 29, 1979
CERTIORARI GRANTED JANUARY 19, 1981

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 78-1789

ARKANSAS LOUISIANA GAS COMPANY, *Petitioner*,

vs.

FRANK J. HALL, W. E. HALL, JR., MRS. W. E. HALL, SR., THE H. M. HARRELL TESTAMENTARY TRUST, JAMES E. HARRELL, JOHN K. HARRELL, SR., ASA BENTON ALLEN, SIDNEY G. MYERS, JR., W. O. COCHRAN, THOMAS F. PHILYAW, MRS. ELAINE ALLEN, JAMES A. NOE, D. B. MCCONNELL, MRS. EVA L. WEISS, SOL KAPLAN and NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS, *Respondents*.

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APPENDIX A

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

No. 78-1789

Arkansas Louisiana Gas Company, *Petitioner*,

v.

Frank J. Hall, W. E. Hall, Jr., Mrs. W. E. Hall, Sr., The H. M. Harrell Testamentary Trust, James E. Harrell, John K. Harrell, Sr., Asa Benton Allen, Sidney G. Myers, Jr., W. O. Cochran, Thomas F. Philyaw, Mrs. Elaine Allen, James A. Noe, D. B. McConnell, Mrs. Eva L. Weiss, Sol Kaplan and National American Bank, New Orleans, Co-Testamentary Executors of the Succession of Seymour Weiss, *Respondents.*

CHRONOLOGICAL LIST OF IMPORTANT DATES

Date	*Court & Case No.*	*Action*
7/18/74	District Court, Bossier Parish, LA, No. 41,599	Suit Filed
10/21/74	District Court, Caddo Parish, LA, No. 225,699	Suit transferred from Bossier Parish District Court and commenced in Caddo Parish District Court
7/30/75	District Court, Caddo Parish, LA, No. 225,699	Opinion on Arkansas Louisiana Gas Company's Declinatory Exception to Subject Matter Jurisdiction
9/26/76-1/14/77	District Court, Caddo Parish, LA, No. 225,699	Trial
10/14/77	District Court, Caddo Parish, LA, No. 225,699	Opinion on the merits

Date	*Court & Case No.*	*Action*
12/2/77	District Court, Caddo Parish, LA, No. 225,699	Opinion on Defendant's Motion for New Trial and Plaintiffs' Motion for New Trial
12/5/77	District Court, Caddo Parish, LA, No. 225,699	Judgment
3/27/78	La. 2nd Circuit Court of Appeal, No. 13,549	Oral argument
5/1/78	La. 2nd Circuit Court of Appeal, No. 13,549	Opinion and Decree
6/6/78	La. 2nd Circuit Court of Appeal, No. 13,549	Denial of All Parties' Applications for Rehearing
6/29/78	Louisiana Supreme Court, No. 62,560	Application for Writ of *Certiorari* filed by Frank J. Hall, *et al.*
7/5/78	Louisiana Supreme Court, No. 62,580	Application for Writ of *Certiorari* filed by Arkansas Louisiana Gas Company
9/22/78	Louisiana Supreme Court, No. 62,560	Application of Frank J. Hall, *et al.*, for Writ of *Certiorari* Granted
9/22/78	Louisiana Supreme Court, No. 62,580	Application of Arkansas Louisiana Gas Company for Writ of *Certiorari* Denied
12/14/78	Louisiana Supreme Court, No. 62,560	Oral Argument
12/18/78	United States Supreme Court, No. 78-986	Petition for a Writ of *Certiorari* to the Court of Appeal, Second Circuit, State of Louisiana, filed by Arkansas Louisiana Gas Company

Date	*Court & Case No.*	*Action*
3/5/79	Louisiana Supreme Court, No. 62,560	Opinion and Decree
4/9/79	Louisiana Supreme Court, No. 62,560	Denial of Arkansas Louisiana Gas Company's Application for Rehearing
5/17/79	District Court, Caddo Parish, LA, No. 225,699	Judgment on remand from Louisiana Supreme Court
5/23/79	District Court, Caddo Parish, LA, No. 225,699	Petition and Order for Appeal and Suspensive Appeal Bond in the amount of $4,725,000 filed by Arkansas Louisiana Gas Company
5/29/79	United States Supreme Court, No. 78-1789	Petition for a Writ of *Certiorari* to the Supreme Court of Louisiana filed by Arkansas Louisiana Gas Company
10/1/79	United States Supreme Court, No. 78-986	Arkansas Louisiana Gas Company's Petition for a Writ of *Certiorari* Denied
12/3/79	La. 2nd Circuit Court of Appeal, No. 14,012	Oral Argument
1/22/80	La. 2nd Circuit Court of Appeal, No. 14,012	Opinion and Decree
2/29/80	La. 2nd Circuit Court of Appeal, No. 14,012	Denial of Arkansas Louisiana Gas Company's Application for Rehearing
4/1/80	Louisiana Supreme Court, No. 67,225	Application for Writ of *Certiorari* filed by Arkansas Louisiana Gas Company
5/2/80	Louisiana Supreme Court, No. 67,225	Arkansas Louisiana Gas Company's Application for a Writ of *Certiorari* Denied

Date	*Court & Case No.*	*Action*
5/9/80	Louisiana Supreme Court, No. 67,225	Order filed Staying Execution of May 2, 1980, Louisiana Supreme Court Judgment, January 22, 1980, Louisiana Second Circuit Court of Appeal Judgment, and May 17, 1979, Money Judgment of the First Judicial District Court, Caddo Parish, Louisiana
5/30/80	United States Supreme Court, No. 78-986	Petition for Rehearing of the Court's Order Denying the Petition for Writ of *Certiorari* filed by Arkansas Louisiana Gas Company
5/30/80	United States Supreme Court, No. 79-1896	Petition for a Writ of *Certiorari* to the Louisiana Court of Appeal filed by Arkansas Louisiana Gas Company
7/2/80	United States Supreme Court, No. 78-986	Arkansas Louisiana Gas Company's Petition for Rehearing Denied
1/19/81	United States Supreme Court, No. 78-1789	Arkansas Louisiana Gas Company's Petition for Writ of *Certiorari* Granted

APPENDIX B

OPINIONS AND ORDERS IN THE COURT BELOW

FIRST JUDICIAL DISTRICT COURT

CADDO PARISH, LOUISIANA

NUMBER 225,699

FRANK J. HALL, ET AL

VERSUS

ARKANSAS LOUISIANA GAS COMPANY

Opinion

For decision is defendant's exception to the jurisdiction of this Court. The plaintiffs seek damages for defendant's alleged breach of contract. Plaintiffs contend that in 1961 defendant began buying Sligo Field gas from the United States government at a price higher than was being paid to plaintiffs for their gas under the 1952 contract entered into between defendant and plaintiffs or plaintiffs' predecessors in title. Plaintiffs contend that this activated the Favored Nations clause of the contract, Section (D), which would require defendant to pay to plaintiffs a price equal to the highest price paid the government. Defendant contends that this Court does not have jurisdiction.

This Court clearly has jurisdiction under the United States Supreme Court decision in *Pan-American Petroleum Corporation vs. Superior Court of Delaware,* 81 S. Ct. 1303 (1961). There the Court held that claims arising under state law, in that case a claim sued in contract or quasi-contract, were a proper subject for a state court to exercise jurisdiction. The Court further stated that this jurisdiction was not abrogated by the Natural Gas Act. Defendant's declinatory exception is without merit and is therefore overruled.

This Court has carefully read the briefs which able counsel for plaintiffs and defendant have filed, as well as the supplemental letters and attachments. We mention this for

the purpose of making it clear to counsel that we have considered all points which have been raised, since the briefs filed by counsel will not be part of the record which will be considered by an appellate court.

July 30, 1975.

/s/ James E. Clark
Judge

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA
NUMBER 225,699

FRANK J. HALL et al

v.

ARKANSAS LOUISIANA GAS COMPANY

Opinion

The plaintiffs in this case are the owners of mineral leases located within the Sligo Field, Bossier Parish, Louisiana, and they have sold all of their gas production from said leases to the defendant, Arkansas Louisiana Gas Company, since about 1939. Defendant took the gas into its pipeline and into its processing plant and the residue gas was delivered into its pipeline distribution system.

After extended negotiations a new gas sales contract between the parties was executed (see Exhibit P-1) which was dated January 11, 1952, under the terms of which plaintiffs agreed to sell their gas production from their said leases located in the Sligo Field for a period of twenty-eight years for a stated price of $0.08547 per MCF of gas (thousand cubic feet) at a pressure base of 15.025 p.s.i.a., and the defendant, Arkansas Louisiana Gas Company agreed to purchase the gas for said amount and in addition included a "Favored Nations Clause" worded as follows:

Section 8(D)

"(D) *If at any time during the term of this agreement Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Gas Field at a higher price than is provided to be paid for gas delivered*

under this agreement, then in such event the price to be paid for gas thereafter delivered hereunder shall be increased by an amount equal to the difference between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract; provided that in determining whether a given price is in fact 'higher' than the price provisions of this contract, the inquiry shall not be limited to the actual prices stipulated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts, such as point of delivery, basis of measurement, taxes, dehydration, and delivery pressures (provided that the number of years stated as the terms during which the two contracts shall respectively remain in force and effect shall not be a factor to be considered for purposes of comparison under this paragraph) and the price to be thereafter payable in accordance with this paragraph for gas delivered hereunder shall be adjusted accordingly insofar as may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts. It is agreed that *any such higher price* for gas delivered hereunder shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the effective date of such subsequent contract, all subject, however, to any rules and regulations of the Office of Price Stabilization or any other regulatory body having jurisdiction." (Emphasis supplied)

In February of 1961, the defendant, Arkansas Louisiana Gas Company, as lessee, acquired a 15% interest in a mineral lease granted by the United States on its lands in the Sligo Field. (Exhibit P-45). In accordance with the requirements of the lease, the defendant and its co-owners drilled a number of producing wells on the property. The defendant did not sell its 15% of the gas produced under the lease but took it into its pipeline and into its processing

plant where the liquefiable hydrocarbons were extracted and the residue gas was delivered into its pipeline distribution system.

The oil and gas lease from the United States provided, in part, for the rights of the lessee in Section 1:

> "SECTION 1. Rights of Lessee.—That the lessor, in consideration of rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, *and dispose of all the oil and gas deposits owned by the lessor* except helium gas in or under the following-described tracts of land situated in the Barksdale Air Force Base East Reservation, Bossier Parish, Louisiana:—." (Emphasis supplied)

The lessee was to pay royalty to the United States as set forth in Section 2(d)(2):

> "2. To pay the lessor a royalty of 16⅔ per cent of the amount or *value* of production obtained and saved from the leased land. Also, to pay an additional royalty of 8⅓ per cent of the value of production until there has been paid as such additional royalty an amount equivalent to $500 an acre for the total number of acres contained in this lease at time of issuance, such number being that cited in Section 1 hereof. In computing such royalty on gasoline or other products extracted from gas or on gas remaining after extraction of such products, no allowance will be made for the cost of gathering, boosting, transportation, extraction, or processing." (Emphasis supplied)

The lease further provided that the lessor, the United States, had the option of receiving its royalties in "value" or in amount of production as provided by Section 2(d)(4):

"(4) *At the option of the lessor to pay the respective royalties herein provided for in value or in amount of production.* If paid in value such royalties shall be due and payable monthly on the last day of the calendar month next following the calendar month in which produced. If paid in amount of production the respective royalty products shall be delivered in merchantable condition on the premises where produced without cost to lessor, unless otherwise agreed to by the parties hereto, at such times and at such shipping point as may be designated by the lessor, or in the case of crude oil, in such tanks provided by the lessee as reasonably as may be required by the lessor, but in no event shall the lessee be required to hold royalty oil or other royalty products in storage beyond the last day of the calendar month next following the calendar month in which produced. The lessee shall not be responsible or held liable for the loss or destruction of royalty oil or other products in storage from causes over which it has no control. (Emphasis supplied)

The lessor, the United States, elected to receive its royalties in value. Section 2(d)(5) provided as follows:

"(5) *It is expressly agreed that the Secretary of the Interior may establish reasonable minimum values for purposes of computing royalty* on any or all oil, gas, natural gasoline, and other products obtained from gas; *due consideration being given* to the highest price paid for a part or for a majority of production of like quality in the same field, *to the price received by the lessee,* to posted prices and to other relevant matters and, whenever appropriate, after notice and opportunity to be heard." (Emphasis supplied)

Beginning in 1962, defendants began to pay the United States Government under the above provision of the con-

tract sums of money based upon a fraction of all gas produced on the lease with the price of gas fixed as $0.117432 per MCF until January 1, 1962, $0.130252 until January 1, 1967, and thereafter $0.140508 at a pressure base of 15.025 p.s.i.a. (Exhibit P-82). At the time these payments began in 1962, the plaintiffs were receiving $0.08797 per MCF.

The principal question in this case is whether or not the payments of money under the above quoted provisions of this contract had the effect of increasing prices under the gas sales contract of plaintiffs as set forth in the Favored Nations provision of said contract, Section 8(D).

Plaintiffs contend that the payments to the United States Government by the defendant under the terms of its lease (Exhibit P-45), but in its position as pipeline purchaser, amounted to a "Purchase from another party seller" within the meaning of plaintiffs' contract with the defendant, Section 8(D), while defendant, in effect, contends that the payments were only a payment of royalty by defendant in its position as lessee and not a purchase of gas, because the United States Government, the lessor, had no title to any gas under the terms of the contract and the amount of gas and the price assigned thereto were only to be used as a measure in figuring that "money" or "value" royalty or rent.

Louisiana has adopted the "non-ownership" theory of oil and gas, that is, that the oil and gas beneath the surface of the ground is not subject to ownership by anyone until it has reached the surface. After a long development the usual oil and gas lease has been held to provide for ownership of the *oil* produced by the lessee and lessor at the time it reaches the wellhead in the proportions set forth in the lease. The lessor is granted the option to receive his royalty as a share of the *oil* production in kind or to be delivered to the pipeline company by the lessee to the credit of the lessor. In the usual situation the lessor sells ***his oil*** to the pipeline company and is paid therefor by the pipeline

company although it is the lessee that actually delivers the *oil* to the pipeline for the lessor's account.

At the time the oil and gas industry in Louisiana was in its formative stages, there was less demand for natural *gas* and it was less marketable. Mineral leases often granted the lessor the same option to receive his royalty on *gas* just as was done in the case of royalty on *oil*.

The usual more recent mineral lease in use in Louisiana often makes a different provision for royalty on *gas* and only provides for the lessor to receive a fraction of the *amount* received from the *sale* of the *gas*, or a fraction of the fair value of the *gas* if the gas is used by the lessee. Regardless of whether it is oil or gas that is produced, it is usually all sold to the pipeline company at the same price and both lessee and lessor are paid their fractional part of the proceeds of the sale based on the same price rate. Ordinarily a raise in the royalty payment was accomplished by increasing the fractional part of the production due to the royalty owner, rather than a raise in the price of his share of the production.

The plaintiffs in this case have cited authorities for the proposition that such wording of a lease as to *gas* that provides for a "money" royalty or value royalty only authorizes the sale of the lessor's share of the *gas* production to the pipeline purchaser by the lessee for the lessor's account. Plaintiffs then conclude that the lessor does customarily sell *gas* to the pipeline company. On the other hand defendant has presented authorities and citations, both State and Federal, to the contrary. The cases referred to often cite the exact wording of the lease involved.

At this point is becomes important to examine the exact wording of this lease. The lease from the United States Government (Exhibit P-45) treats the royalty due to the lessor on oil and gas in principally the same fashion. It

does not differentiate between *royalty on gas* as opposed to *royalty on oil*. See the emphasized portions of the lease by the United States (Exhibit P-45), Sections 2(d)(2), 2(d)(4) and 2(d)(5). In other words the lease contemplates that the legal title to oil and gas would be the same at the time it reaches the wellhead.

The same Exhibit P-45 in speaking of the rights of lessee in Section 1 thereof as previously quoted herein states that the lessee is granted "—the exclusive right and privilege to drill for, mine, extract, remove, *and dispose of all the oil and gas deposits owned by the lessor*—". (Emphasis supplied).

Because it is well-established that in Louisiana the landowner does not own "deposits" of oil and gas in the ground, but that oil and gas is only subject to ownership when it is produced at the wellhead, it would be impossible for the lessee to "dispose" of *oil* and *gas* deposits "owned" by the lessor until they are produced at the wellhead, but at that point it is possible for the lessee to "dispose" of the production including the share of the *oil* and *gas* production "owned" by the lessor.

Although the words used in the form of the lease (Exhibit P-45) do not seem to be designed for use in a state such as Louisiana that subscribes to the "non-ownership" theory of oil and gas they are consistent with the Louisiana theory if given the above construction. In other words, the lessee is authorized to sell the lessor's share of the *oil* and *gas* production to the pipeline purchaser for the lessor's account.

Defendant argues that the decisions of the Federal Courts have held that no sale of *oil* and *gas* is involved on the part of the United States as lessor in such an instance; otherwise, the Federal Power Commission would be required to exercise jurisdiction of the sale of *gas* produced in interstate commerce, which it does not. Also, if the transaction by the United States, as lessor, amounted to a

sale of *gas* or *oil,* the United States would be required to exercise the option of taking its production in kind and would not be able to dispose of it except by public bid and sale under the applicable Federal statute. In my opinion the answer to these contentions and the testimony of the opinion of the Federal experts is the simple fact that this Court is dealing with the construction of a Louisiana contract under Louisiana law and not the construing of the lease for the purpose of a Federal statute or statutes as were the cases and opinions cited by the defendant. Although inconsistent with the Federal decisions, the inconsistency does not conflict with the Federal statutes to the extent that both cannot co-exist.

Because of the contradiction of legal authority on the technical question of whether a lessor has title of gas to sell there is an ambiguity in the use of the words "—purchase from another party seller—" as used in the contract between plaintiffs and defendant, Exhibit P-1, which cannot be gleaned from the other portions of the contract. For this reason other evidence is admissible to discover the true intention of the parties.

The defendant in this case customarily listed the lessor as a "seller" on its required division orders and required their signatures thereto. Essentially the same form was used by the defendant whether the product produced was oil, gas or condensate. Defendant argues that Section 11 of the contract provided that the plaintiffs would be paid for 8/8th of the gas and would be responsible for paying the royalty and that this provision demonstrates that the intention of the parties was that a lessor was not contemplated as a "seller"; however, the plaintiff points out that this same Section 11 goes on to grant the plaintiffs the option to require the defendant to pay the royalty and in such case the plaintiffs were obligated to furnish signed division orders to the defendant on forms provided by

the defendant and that these forms, in fact, listed the royalty owners as "sellers".

By citing the above facts, it is not my intention that this case be decided on the wording in a division order, but only to demonstrate that the evidence shows the word "seller" to have a broader usage and more general meaning than the more restricted definition plaintiff now asserts.

Defendant next argues that the United States under the lease, Exhibit P-45, was not furnished with any division order nor required to sign a division order and that this fact illustrates that the United States Government, as lessor, was not regarded as a "seller". On the other hand the evidence in this case shows that the United States does not sign a division order, but relies on the lease contract, so that the failure of the defendant to require a division order signed by the United States cannot be relied on to demonstrate the intention of the parties to P-45.

The gas purchase contract in this case between plaintiffs and defendant (Exhibit P-1) was drafted after a long negotiating process. Section 8(d) was the subject of give and take negotiations, each party giving on one point in order to gain another. The only things that this Court can conclude from the evidence of these negotiations is that Section 8(d) was not to be restricted in its application to just other formal "gas purchasing contracts" executed by buyer with other sellers of gas produced in the Sligo Field, but would apply to such a "purchase" of such gas from another party seller by means other than a formal full-fledged gas purchase contract, such as an *oral* contract. See testimony of Mr. Hetherwick, Tr. Vol. 20, p. 74, line 6 to 30. The fact that it was intended to apply to even *oral* contracts evidences an intent that it should have a broad application. It was intended to apply to gas from "any" wells located in the Sligo Gas Field purchased by defendant. In addition the intent of Section 8(d) was to protect plaintiffs against

a rise in the purchase price of gas that might be paid by defendant within the Sligo Field during the long 28-year term of the contract by cutting across some of the traditional lines usually associated with such contracts.

Defendant's principal argument is that in making payment to the United States under its lease, Exhibit P-45, that it was paying royalty as lessee, *not* purchasing gas as pipeline purchaser. On the contrary, defendant was acting in a dual capacity at one and the same time. It was paying royalty as lessee *and* purchasing gas as pipeline purchaser within the meaning and intent of Section 8(d).

For all of the above reasons it is the opinion of this Court that the acceptance of gas produced from the mineral lease executed by the United States, Exhibit P-45, by the defendant as a pipeline operator and payment therefor to the United States constituted a purchase of gas from another party seller within the meaning of the contract of plaintiff, Exhibit P-1.

The defendant next argues that the contract between plaintiff and defendant, Exhibit P-1, is not comparable with the lease from the United States to the defendant, Exhibit P-45. As previously stated, the intention of the parties in the execution of Exhibit P-1 was that Section 8(d) would be broader than just applying to the purchase of gas through a formal gas purchase contract but it was intended to also apply to such things as an *oral* contract, which, in fact, evidences the intent of the parties that the coverage would be extremely broad, because it would neither contemplate that an oral contract would include all the many provisions contained in the full-fledged gas purchase contract, nor necessarily contemplate that the gas purchased be shipped in interstate commerce, since the Federal Power Commission does not recognize an oral contract for the sale and purchase of gas.

The defendant argues that the drilling obligation contained in the lease, Exhibit P-45, provides an item that

makes the two contracts incapable of comparison, but the list of items in Section 8(d) is not an exclusive listing of either pertinent factors of comparison or non-pertinent factors of comparison. It appears to the Court that since Section 8(d) specifically states that the length of the term of the contract shall not be a factor to be considered for comparison of the two contracts that the drilling obligation contained in the lease, Exhibit P-45, would be of the same type of factor and should not be considered for purposes of comparison.

As one would imagine the day-to-day administration and accounting involved in a gas purchase contract is extremely complicated. The defendant is in the business of administering these contracts and the head of its accounting department, Mr. W. W. McLeod, testified that it would be possible to compare the price of gas received by plaintiff under Exhibit P-1 and the price received by the United States under Exhibit P-45, and to compute all the pertinent factors in making the comparison and that it could have been done over the years had he been so instructed at the time. See testimony of Mr. McLeod, Vol. 10, pages 83 to 85, and Vol. 12, page 17.

The defendant in this case has made no comparison between the two prices, it having taken the position throughout that the two are not capable of comparison; however, it is my opinion that the evidence shows that the two are capable of comparison. The best information was or is in the possession of the defendant, although the sheer of volume of the documents to be considered (estimated by defendant at one time as a literal box-car load) and the length of time that has elapsed since most of them were used presents a very difficult picture as to if all are still in existence. The Court is required to act on the best information produced before it. Absolute certainty is not required.

Defendant next contends that one plaintiff, W. E. Hall, Jr., executed a contract on May 25, 1969, deleting the Favored Nations Clause from the 1952 contract for which reason he has no claim against the defendant under Section 8(d) thereof. It is my opinion that the defendant's contentions in this regard are correct and should be sustained. He executed the contract, Exhibit P-285, which deleted the Favored Nations Clause in order to be able to sell gas from a well to the defendant in order to avoid having to operate a compressor for the gas. There was no error as to the principal cause of the contract, Exhibit P-285, nor has he restored or offered to restore the benefit he received under the contract as is a pre-requisite under the Civil Code Articles 1819 and 1882.

Defendant relies on several defenses that arise from the provisions of the Natural Gas Act. The first contention is that plaintiffs cannot recover a raise in prices because plaintiff never obtained approval of the higher rate or price from the Federal Power Commission as required under the Natural Gas Act, 15 U.S.C.A. 717 et seq., adopted by Act of Congress on June 21, 1938. Defendants have cited the case of *Interstate Natural Gas Co. Inc., et al v. Mississippi River Fuel Corporation,* 55 So.2d 755; 220 La. 43, decided by the Supreme Court of the State of Louisiana in 1951. The holding of that case is that the plaintiffs, having failed to apply to the Federal Power Commission to put the increase rate into effect, cannot recover such damages from the defendant.

The plaintiffs point out that the Federal Power Commission, by general rules, has established a system which permits independent producers to obtain from the Commission a "Small Producers Certificate" which authorizes them from the effective date of such certificate to collect increased rates provided by their contract within the limits of the Commission Area Rate orders. Four of the plaintiffs herein, Frank J. Hall, Virgil J. Hall, James A. Noe

and S. G. Myers received Small Producers Certificates effective October, 1972, and would be eligible for the increased rate provided by their contract within the limits of the Commission's Area Rate orders. The remainder of the plaintiffs herein, other than Mr. W. E. Hall, Jr., above referred to, are entitled to the benefit of a Small Producers Certificate under the applicable statutes and would likewise be entitled to collect increased rates provided by their contract within the limits of the Commission's Area Rate orders. See Federal Power Commission Order No. 607 and 607-a. The evidence demonstrates that the prices paid to the United States per MCF of gas was below the maximum area rate established in these orders, which means that the area rate schedule would not actually impose any limit under the facts of this case after October, 1972, but would prevent recovery before that date.

Defendant has pled prescription of one, three and ten years. The facts of this case are that the lease from the United States, Exhibit P-45, was not even of record in Caddo Parish, Louisiana, nor was the information available giving the prices being used to compute the Government's royalty payment until plaintiffs were able to obtain the information about June 26, 1974. Suit was filed July 18, 1974.

Prescription does not run against one who is ignorant of the existence of facts that would entitle him to bring a suit, when such ignorance is not willful and does not result from negligence. Plaintiffs were not advised of the facts in this case until they succeeded in obtaining a letter dated June 25, 1974, from Mr. F. L. Stelzer which included the lease from the United States, Exhibit P-45, and the letter of establishing the price set by the Government, Exhibit P-65, and the letter in which defendant acceded thereto, Exhibit P-82. Under this state of facts prescription does not run against plaintiffs and defendant's plea of prescription is to no avail.

One of the plaintiffs herein, Frank J. Hall, was qualified as an expert in the oil and gas business, having drilled and produced wells for many years. He, or others under his direction, has prepared contracts, bought and sold gas and oil, mineral leases, royalty, minerals, managed properties, and dispersed and paid royalties on gas production. I find that he has sufficient expertise because of his experience to permit the introduction of his calculations or those made under his supervision and direction. The objection goes to the weight of the evidence and not to its admissibility.

Mr. Hall with the help of persons working at his direction prepared a calculation of the difference in prices between the two contracts in dispute here after consideration of all the pertinent factors. He then considered the volumes of gas purchased from plaintiffs and the fractional part attributable to each plaintiff's share. This calculation is the best evidence that the Court has before it and appears to be reasonable. This calculation, however, was based upon the entire period of the claim back from 1961, to December 31, 1975; whereas, the effective date of the Small Producers Certificates began in October, 1972. It is the opinion of this Court that, considering the differences in prices each year and the share attributable to each plaintiff that his itemization of the total damage due each plaintiff, except W. E. Hall, Jr., should be reduced by 68% to correctly reflect the deletion of plaintiffs' claims before October, 1972; damages for loss of depletion allowance; damages for failure to drill Section 17, and to recognize the difference in the comparisons involving raw condensate, wet gas, extracted products, manufactured products and combinations of each.

Defendant has made no claim that the fractional division of ownership between plaintiffs is in error, that the division is contrary to the records in its own division order department, or that there is any adverse claim of title against any of the interests of plaintiffs. Under the terms of its own

division orders defendant cannot equitably refuse to pay the additional sums, there being no reason to fear that the defendant would have to pay said sums to some one else.

Let there be judgment against the defendant in favor of plaintiffs in the following amounts, plus costs and interest from January 1, 1976:

Frank J. Hall	—	$135,413.44
Virgil J. Hall, widow	—	36,930.88
Carlyle W. Urban, Trustee under will of H. M. Harrell	—	202,954.56
John K. Harrell, Sr.	—	25,368.96
James E. Harrell	—	25,368.96
Elva L. Weiss, widow	—	56,853.12
National American Bank, Executor under Will of Seymour Weiss	—	56,853.12
T. F. Philyaw	—	1,187.84
W. O. Cochran	—	4,644.16
D. B. McConnell	—	42,301.76
S. G. Myers	—	41,668.80
James A. Noe	—	153,128.96
Asa Benton Allen	—	21,530.24
Elaine Allen	—	20,874.88

Let there be further judgment in favor of defendant, Arkansas Louisiana Gas Company, rejecting the demands of plaintiff, W. E. Hall, Jr., at his costs.

October 14th, 1977.

/s/ C. J. Bolin, Jr.
C. J. Bolin, Jr.
District Judge

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA
Number 225,699

FRANK J. HALL, ET AL

v.

ARKANSAS LOUISIANA GAS COMPANY

Opinion on Defendant's Motion for New Trial Limited To Reargument and Supplement To Motion for New Trial
and
Opinion on Plaintiffs' Motion for New Trial Limited To A Rehearing and Motion for Modification of Judgment

The defendant in its motion and supplemental motion for a new trial strenuously argues that it did not breach Section 8(d) of the contract with plaintiffs.

After carefully considering the arguments made, it is still my opinion that insofar as 8(d) is concerned the effect is (and should be) the same regardless of whether P-45 was executed by the United States as lessor or had been executed by a private party as lessor; that P-45 gave the lessor, the United States, the right to exercise every incident of ownership of its royalty and when it elected to be paid in value it had the unusual right to fix the value of the production upon which its royalty payments were calculated, all of which rights are consistent with ownership of the royalty by the lessor and a purchase of gas by defendant-pipeline operator; that this Court is dealing with the construction of the Louisiana law, Section 8(d) of Exhibit P-1, which was intended to have a broad application, to apply to gas from "any" wells located in the Sligo Gas Field purchased by defendant, and with the purpose of protecting plaintiffs against a rise in the purchase price of gas that might be paid by defendant within the Sligo Field during the long twenty-eight year term of the con-

tract by cutting across some of the traditional lines usually associated with such contracts; the lease from the United States, Exhibit P-45, is to be construed in the light of such intent and purposes and, insofar as Section 8(d), in accordance with Louisiana law.

Defendant relies on the case of *Wallis v. Pan American Petroleum Corporation,* 384 U.S. 63; 16 L.Ed 2d 368; 86 Sup.Ct. 1301, but that case specifically held that the federal common law does not govern the dealings of private parties in an oil and gas lease validly issued by the United States under the Mineral Leasing Act of 1920, and that the decision of the case would depend upon state law. The court refused to extend the application of federal law beyond the initial grant of the lease therein involved and even refused the argument "that federal law retains its initial hold on the lease until existing equities are resolved." Cases cited in that decision which did extend federal law to govern the outstanding equities existing at the time of an original grant of land were distinguished and "explained by a specific federal interest found in conflict with local law." Other cases were distinguished where there was *no* specific federal interest, because there was *no conflict with* local law. See 16 L.Ed 2d 369, at page 375. In the instant case there is also *no* specific federal interest in the construction of the contract between plaintiff and defendant and Section 8(d) thereof and, as stated in this Court's previous opinion, there *is a conflict with local law.*

The defendant here has relied on the case of *Miree v. United States,* 538 F. 2d 643, in arguing that federal law should control in the construction of the lease from the United States, P-45, insofar as its effect on Section 8(d). The facts of that case were that DeKalb County, Georgia, entered into an agreement with the Federal Aviation Administration whereby in return for a grant of money by that agency DeKalb County gave the FAA certain assurances, among which were its promises that it would operate its airport for the use and benefit of the public, main-

tain it in a safe and serviceable condition, and limit use of adjacent land so that it would not interfere with the safe use of the airport. Thereafter, a jet aircraft crashed after ingesting birds swarming over the airport and feeding on the adjacent county garbage dump. The persons injured and representatives of the persons thus killed filed suit against DeKalb County as *third-party beneficiaries under the county's agreement under the FAA*. The United States Court of Appeals, Fifth Circuit, held in an en banc decision held that the Federal Common Law would apply, not the law of Georgia. Five judges of the court joined in a dissenting opinion.

The dissent in the above cited case sets forth principles and authorities which apply to the facts of the instant case. The facts of the instant case are at least two steps removed from those in the above cited case: (1) because plaintiffs here are not suing as third-party beneficiaries of the agreement with the United States, but are seeking to enforce an entirely Louisiana contract and provision 8(d) thereof. (2) the Federal Government is not a party to this suit and should have no particular interest in the outcome of this lawsuit. The interest of the Federal Government in the construction of Exhibit P-1 and Section 8(d) thereof is too remote to require the application of federal law, but the State of Louisiana has an interest in construing this Louisiana contract and Section 8(d) thereof in the same fashion regardless of whether the triggering mechanism be a purchase of gas from a private individual or the United States.

Defendant likewise relies on the case of *Murphy Corporation* v. *Fontenot,* 225 La. 379; 73 So.2d 180, for the proposition that the Supreme Court of the State of Louisiana has held that "the fugitive oil and gas when captured did not belong to the Federal Government but to private owners". The case did not involve an attempt to collect severance tax on the entire 8/8ths of the production from the

lease, but only that 6/8ths portion belonging to the lessees. The opinion states on Page 182 "protective measures from the drainage were sought and secured by the Government's selling exploratory rights to private purchasers and lessees who became the *owners of all* the severed minerals when they were captured, *except a 2/8th royalty* paid the U.S. Government." At Page 183 the opinion used the following language "—and the Government retained 2/8ths royalty rights in the oil and gas produced—". Actually the opinion did not address the question of the legal title of the 2/8ths production, but if so then the opinion excepts the "2/8ths royalty paid the U. S. Government" and seems contrary to defendant's contentions.

The plaintiffs in their motion contend that the case of *Interstate National Gas Company, Inc., et al v. Mississippi River Fuel Corporation,* 220 La. 43; 55 So.2d 775, was not the authority for the proposition cited by the Court in this case. The decision of the Louisiana Supreme Court there construed a gas purchase contract, the question being whether or not the contract and the amendment thereto resulted in a debt which accrued before 1938, the date the National Gas Act went into effect, or whether or not the result was a price increase that was to go into effect in 1944. The Court found that it was not an accrued debt, but rather a part of a price increase and plaintiffs had failed to apply to the Federal Power Commission as required by the National Gas Act (and even though the parties had contracted therefor), plaintiff was denied recovery. For this reason the decision does have an application to the facts of this case.

Plaintiffs also contend that the decision of this Court is contrary to that of other state judges and the federal court in this case in recognizing a defense under the National Gas Act, but my understanding of those decisions is that those courts looked to see whether or not plaintiff stated a cause of action and permitted the case to go to trial. De-

fenses based upon the National Gas Act, which are affirmative defenses, were to be pled and proved by the defense, as was done in this case.

Plaintiffs properly point out that one plaintiff, S. G. Myers, did not acquire his interest in the properties until December 1, 1972, and would not be subject to the reduction of 68% imposed by the Court. For this reason it is my opinion that Mr. Myers is entitled to his total damages of $130,215.91, but all other damages were properly calculated and are to remain the same.

The motion for new trial and supplemental motion for new trial filed by defendant is denied.

The plaintiffs' motion for new trial limited to a re-hearing and motion for modification of judgment is granted limited to re-argument and, the re-argument having been had, let there be judgment in favor of plaintiffs and against defendant all as previously granted, except that the amount of damages awarded to Sidney G. Myers is fixed at $130,215.91, instead of the amount originally stated.

December 2nd, 1977.

/s/ C. J. Bolin, Jr.
C. J. Bolin, Jr.
District Judge

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

NUMBER 225,699

FRANK J. HALL, ET AL

VERSUS

ARKANSAS LOUISIANA GAS COMPANY

Judgment

This case having come on regularly for trial on its legal merits on September 27, 1976, and the trial of said case having been concluded on January 14, 1977; and the case having been submitted for decision on June 20, 1977, after the completion of oral arguments and the filing of written briefs, the Court having found the law and the evidence to be in favor thereof and for reasons assigned in written Opinions dated October 14, 1977 and December 2, 1977, which have been filed in the record herein;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the following Plaintiffs against the Defendant, ARKANSAS LOUISIANA GAS COMPANY, awarding to said Plaintiffs the sums as hereinafter set forth, to wit:

FRANK J. HALL	—	$135,413.44
VIRGIL J. HALL, widow	—	36,930.88
CARLYLE W. URBAN, Trustee under Will of H. M. HARRELL	—	202,954.56
JOHN K. HARRELL, SR.	—	25,368.96
JAMES E. HARRELL	—	25,368.96
ELVA L. WEISS, widow	—	56,853.12

NATIONAL AMERICAN BANK, Executor under Will of SEYMOUR WEISS	—	56,853.12
T. F. PHILYAW	—	1,187.84
W. O. COCHRAN	—	4,644.16
D. B. MCCONNELL	—	42,301.76
JAMES A. NOE, JR. and C. T. MUNHOLLAND, Testamentary Executors under Last Wills of Mr. and Mrs. JAMES A. NOE	—	153,128.96
S. G. MYERS	—	130,215.91
ASA BENTON ALLEN	—	21,530.24
ELAINE ALLEN	—	20,874.88

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above and foregoing Plaintiffs are awarded legal interest on the above and foregoing sums from January 1, 1976, until paid and for all costs of this proceeding.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the Defendant, ARKANSAS LOUISIANA GAS COMPANY, rejecting the demands of the Plaintiff, W. E. HALL, JR., at his cost.

JUDGMENT RENDERED herein by virtue of written Opinions dated October 14, 1977 and December 2, 1977, respectively, which are filed in the record of this proceeding.

JUDGMENT READ AND SIGNED on December 5, 1977, at Shreveport, Louisiana.

/s/ C. J. BOLIN, JR.
C. J. Bolin, Jr.
District Judge

No. 13,549

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

May 1, 1978

FRANK J. HALL, ET AL, *Plaintiffs-Appellants*

v.

ARKANSAS-LOUISIANA GAS COMPANY, *Defendant-Appellant*

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Honorable C. J. Bolin, Jr., Judge

* * * * *

WIENER, WEISS, MADISON & HOWELL by James Fleet Howell — *Attorney for Plaintiffs-Appellants*

BLANCHARD, WALKER, O'QUIN & ROBERTS by Robert Roberts, Jr. — *Attorneys for Defendant-Appellant*

* * * * *

Before: PRICE, MARVIN, JONES, J.J.

By Price, J.

Plaintiffs seek damages for an alleged breach of contract by defendant for failing to escalate the price of gas purchased from them in accord with a price adjustment provision contained in a long-term gas purchase contract.

Plaintiffs are either independent producers or owners of various mineral interests under numerous leases producing natural gas in the Sligo Gas Field of Bossier Parish. Defendant, Arkansas Louisiana Gas Company (Arkla) is a large integrated gas utility company, which engages in exploration, production, transmission, purchase, and sale of natural gas and its by-products. Arkla has for many years been a major purchaser of gas in the Sligo Field.

The gas purchase contract forming the basis for this litigation was executed in 1952 between Arkla and several independent producers pursuant to a lengthy renegotiation of an existing contract which had been in effect since 1937, and which would have expired in 1954. Although all of the multiple plaintiffs herein were not original parties to the 1952 contract, they have subsequently become parties subject to the agreement by amendment or by operation of law. The 1952 agreement obligated plaintiffs to sell all of the gas produced or owned by them in the Sligo Field to Arkla for a period of twenty-eight years and provided for a fixed schedule of prices per MCF to be paid for raw gas throughout the period of the contract. The agreement further contained a price adjustment provision referred to in the contract as a "Favored Nations Clause," providing:

> (D) If at any time during the term of this agreement Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Gas Field at a higher price than is provided to be paid for gas delivered under this agreement, then in such event the price to be paid for gas thereafter delivered hereunder shall be increased by an amount equal to the difference between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract; provided that in determining whether a given price is in fact "higher" than the price provision of this contract, the inquiry shall not be limited to the actual prices stipu-

lated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts, such as point of delivery, basis of measurement, taxes, dehydration, and delivery pressures (provided that the number of years stated as the terms during which the two contracts shall respectively remain in force and effect shall not be a factor to be considered for purposes of comparison under this paragraph) and the price to be thereafter payable in accordance with this paragraph for gas delivered hereunder shall be adjusted accordingly insofar as may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts. It is agreed that any such higher price for gas delivered hereunder shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the effective date of such subsequent contract, all subject, however, to any rules and regulations of the Office of Price Stabilization or any other regulatory body having jurisdiction.

In February 1961 Arkla acquired, as lessee, a fifteen percent interest in an oil and gas lease granted by the United States on approximately 2,400 acres of land owned by it in the Sligo Field. Arkla participated with its co-lessees in drilling for and producing gas in substantial amounts from this leased acreage. Arkla has taken its fifteen percent share of the gas produced into its own processing plant in the Sligo Field and disposed of it through its own distribution system including transmission through an interstate pipeline. The lease from the United States stipulated a royalty to be paid by the lessees of a percentage of the oil or gas production obtained or, at the option of the United States, a payment in money by the lessees of the fair market value attributed to its percentage of production. The government has continuously elected to be paid a "value royalty," and in accord with the right reserved by it to have

the Secretary of Interior establish the reasonable minimum value of gas for computation of royalty due, the price determined and ultimately acceded to by Arkla was and has continued to be in excess of that being paid plaintiffs under the 1952 contract.

Plaintiffs brought this action in October 1974 alleging that the payment of the higher price to the United States by Arkla beginning in 1961 activated the provisions of the Favored Nations clause of the 1952 contract and obligated Arkla to increase the purchase price paid plaintiffs commensurate with the price paid the government.

Plaintiffs seek compensatory damages and an accounting from Arkla alleging that it was in bad faith in intentionally concealing from them for fourteen years that a higher price was being paid for gas to the United States.

Arkla filed appropriate responsive pleadings questioning the jurisdiction of the state court alleging that the gas purchases in question have always been subject to the provisions of the Natural Gas Act, and solely within the jurisdiction of the Federal Power Commission (FPC), which has since been superseded by the Federal Energy Regulatory Commission (FERC). Arkla's attempt to have the case removed to the Federal District Court on that basis was denied.

In answer to the original and several amended pleadings of plaintiffs, Arkla denied it had triggered the Favored Nations clause of the 1952 contract by payment of an amount for gas to the United States which exceeded that being paid plaintiffs since the payment to the United States was solely a "rental royalty" and not a purchase of gas from another "party seller" as required for activation of the price adjustment provision.

An exception of no cause of action was filed by Arkla against the claim of one of plaintiffs, W. E. Hall, Jr., on the basis that he executed an amendment to the contract

dated May 25, 1969, which deleted the benefit of the Favored Nations clause as to him. Hall through responsive pleadings contends the amendment by him was ineffective because it was executed in error as he had no knowledge at the time that Arkla had previously breached the contract by paying the higher price to the United States.

After a very lengthy trial on the merits,[1] the district court sustained the exception of no cause of action as to the claims of W. E. Hall, Jr., and dismissed his demands. The court rendered judgment for all other plaintiffs as follows:

Frank J. Hall	$135,413.44
Virgil J. Hall	36,930.88
Carlyle W. Urban, Trustee under Will of H. M. Harrell	202,954.56
John K. Harrell, Sr.	25,368.96
James E. Harrell	25,368.96
Elva L. Weiss	56,853.12
National American Bank, Executor under Will of Seymour Weiss	56,853.12
T. F. Philyaw	1,187.84
W. O. Cochran	4,644.16
D. B. McConnell	42,301.76
James A. Noe, Jr. and C. T. Munholland, Testamentary Executors under Last Wills of Mr. and Mrs. James A. Noe	153,128.96
S. G. Myers	130,215.91
Asa Benton Allen	21,530.24
Elaine Allen	20,874.88

There are several issues on appeal which can be generally categorized as follows: (1) whether the Federal Energy

[1] The pleadings and testimony consume twenty-six volumes containing 4,987 pages. There are additionally over 360 exhibits offered by plaintiff and over 80 offered by defendant.

Regulatory Commission has the sole and exclusive subject matter jurisdiction; (2) whether the Favored Nations clause was activated when defendant paid value royalty at a higher price to the United States than it paid for gas purchases to plaintiffs; (3) whether W. E. Hall, Jr., validly waived his interest in the Favored Nations clause when he signed an amended contract in 1969; and (4) whether the award of damages by the trial court was correct.

I. Jurisdiction

The threshold issue on appeal is whether the trial court had proper subject matter jurisdiction to entertain this suit. Defendant contends the trial court lacked the power and authority to determine the rate at which natural gas was or is sold in interstate commerce since the rate-making function is vested solely and exclusively in the FERC by the Natural Gas Act. Defendant further contends that the FERC has primary jurisdiction to determine the contractual issue of whether the Favored Nations clause of the 1952 contract was activated by its payment of value royalty to the United States. Neither of these contentions can be maintained. Defendant's initial argument is in error because the relief sought is not that of a rate increase, but is instead a claim for damages arising under state contract law. Although the state court must adhere to the provisions of the Natural Gas Act and the pertinent regulations of the FERC in its determination of damages, it is a proper forum for adjudication of a state contract law dispute. Furthermore, the Natural Gas Act evinces no purpose to abrogate private rate contracts. *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 76 S.Ct. 373 (1956). The act recognizes the rights of the parties to rates established by individual contract and does not alter ordinary contractual relationships where the controversy is one of ordinary contract law. *Cities Service Gas Company v. Federal Power Commission*, 255 F.2d 860, *cert. den.* 358 U.S. 837, 79 S.Ct. 61 (1958); *Skelly Oil Co. v. Federal Power Commission*,

532 F.2d 177 (1976); *Phillips Petroleum Co. v. Federal Power Commission,* 349 F.2d 535 (1965). A claim founded on state contract law does not lose its character just because the Natural Gas Act is in some way involved. *Pan American Petro. Corp. v. Superior Court of Del.,* 366 U.S. 656, 81 S.Ct. 1303 (1961).

Defendant's contention that the FERC has primary administrative jurisdiction to decide this contract dispute is also in error. In recent years the doctrine of primary administrative jurisdiction has been refined to apply to claims involving the special competence and expertise of an administrative body. *Montana-Dakota Util. Co. v. Northwestern Pub. S. Co.,* 341 U.S. 246, 71 S.Ct. 692 (1951); *Best v. Humboldt Placer Mining Company,* 371 U.S. 334, 83 S.Ct. 379 (1963); *United States v. Western Pacific Railroad Co.,* 352 U.S. 59, 77 S.Ct. 161 (1956). State courts do have jurisdiction to determine matters of contract law not within the specific technical expertise of the FERC. *Pan American Petro Corp. v. Superior Court of Del., supra.* The major issue in the case before us is one of construing the provisions of a contract and the intentions of the parties at the time of the execution of the contract. Such a determination does not require the specific technical expertise of the FERC. Although the FERC may have original jurisdiction in this case, it does not have exclusive original jurisdiction, but rather shares concurrent original jurisdiction with the state court.

II. Activation of the Favored Nations Clause

Plaintiffs contend payments made to the United States by defendant in its dual capacity as lessee and pipe-line purchaser are tantamount to a "purchase from another party seller," as this term was intended in the price adjustment clause of their 1952 gas sales contract with defendant. Defendant contends the payments were royalty or rent being paid in its position of lessee and not a purchase because the United States had no title to any gas produced

under the lease, it having continuously elected to accept a value royalty on the gas produced.

We recognize that the theory of ownership and classification of lease royalty payments as rent as urged by defendant is in accord with the prevailing state law and federal decisions on this issue. See *Shell Petroleum Corp. v. Calcasieu Real Estate & O. Co.,* 185 La. 751, 170 So. 785 (1936); *Logan v. State Gravel Co.,* 103 So. 526 (La. 1925); *Board of Com'rs. of Caddo Levee Dist. v. Pure Oil Co.,* 167 La. 801, 120 So. 373 (La. 1929); *Melancon v. Texas Company,* 230 La. 593, 89 So. 2d 135 (1956). *Mobil Oil Corporation v. Federal Power Commission,* 463 F.2d 256 (1971), *cert. den.* 406 U.S. 976, 92 S.Ct. 2413 (1972).

We nevertheless find it inappropriate to accept the technical and restrictive interpretation on the term "purchase from another party seller" relied on by defendant under the circumstances shown in this instance.

The evidence shows that during the lengthy negotiations between defendant and the principal plaintiffs in 1952, defendant's prime objective in renegotiating the preexisting contract was to commit the plaintiffs to a long-term contract. As an inducement for a twenty-eight-year-term the officials of the defendant corporation offered to include a Favored Nations clause. The request by plaintiffs to have the clause pivot on the highest market price being paid by *anyone* in the field was rejected by defendant.

The handwritten notations made at that time by the defendant's attorney who prepared the final draft of the agreement show that his instructions from the official of defendant handling the negotiations were to prepare a price adjustment clause based on "highest price we pay for gas in the Sligo Field." Thereafter, agreement on the subject clause was reached which tied it to the highest price being paid by *defendant* in the Sligo Field.

There is no evidence suggesting the description of the contracting parties as "Buyer" and "party sellers" was in-

tended to have any restrictive legal meaning and the terms were apparently standard phrases contained in a Favored Nations clause of another contract used as a model by the attorney drafting the agreement. Indicative of the fact that little thought was given to these terms having any significant restrictive effect on the broad application of the clause is the absence of a definition of the words "Buyer" and "party seller" within the agreement. Although defendant strenuously urges that the terms "Buyer," "seller," and "purchase" as used in the Favored Nations Clause has a restrictive legal meaning and limits the applicability of the clause to "sales" of gas, defendant's actions subsequent to execution of the contract show a tendency on its part to use sales terminology in a very broad manner to also include royalty interests in the preparation of division orders and the payment of royalty to lessors from a bank account styled "Gas Purchase Account."

The general rule of contract interpretation concerning a Favored Nations clause is that "in order to give effect to the intention of the parties the Court must consider the circumstances surrounding the making of the contract, its subject, and the situation and relation of the parties at the time of its making; *and the construction placed upon the contract by the parties to it as reflected by their words and acts is entitled to great, if not controlling influence in ascertaining the parties' understanding of its terms.*" [emphasis added] *Louisiana-Nevada Transit Co. v. Woods,* 393 F. Supp. 177 (1975).

The basic purpose of a price adjustment or Favored Nations clause is to protect a seller from discrimination by the pipe-line purchaser of gas under a long-term contract. *Eastern Petroleum Company v. Kerr-McGee Corporation,* 447 F.2d 569 (1971); *Louisiana-Nevada Transit Co. v. Woods, supra.* As it is intended for the protection of the seller, the clause should be broadly construed to effectively carry out this purpose. Therefore, to exclude the substan-

tial amounts paid to the government by defendant as having any bearing on the price being paid for gas by defendant in this field because of a technical semantic classification of the payment as being rent royalty would render the protection intended to be afforded plaintiffs by a price adjustment clause meaningless.

The factors affecting our decision on this issue are analogous to those presented in *Eastern Petroleum Company v Kerr-McGee Corporation, supra,* in which the court found a payment of royalty to the state of Arizona under a lease of public lands to activate a Favored Nations clause in a contract providing that payment for gas "shall never be less than the price paid by Buyer to other sellers of helium-bearing gas from leases or lands in the same general area." The defendant pipe-line purchaser in that case contended the payment of royalties to the state was not a "price" paid to another "seller" within the meaning of the contract as the gas was "owned" by the lessee at the time it was reduced to possession. The court found it unnecessary to decide whether the payment under the lease to the state was a purchase of gas or royalty as either classification was within the purpose and intent of the price adjustment clause of the contract before it. As we are unaware of any appellate decisions in this state concerning the interpretation of such unusual contractual provisions, we are constrained to follow the federal jurisprudence in resolving this question.

For the foregoing reasons, we conclude the trial court was correct in holding that the payment by defendant for gas produced under the lease from the United States was within the scope of the price adjustment clause of plaintiffs' contract.

III. Waiver of Favored Nations Clause By W. E. Hall, Jr.

On May 25, 1969, W. E. Hall, Jr., one of the numerous plaintiffs herein, executed an amendment to the 1952 gas purchase contract wherein he deleted his interest in the Favored Nations clause. Defendant asserts plaintiff's waiver as an affirmative defense against his claim for damages arising under the price adjustment clause. Plaintiff contends the waiver was ineffective because he executed the amendment under an error of fact induced by defendant's misrepresentations and concealment of the true facts causing him to believe the price adjustment clause had not been activated. Plaintiff contends he would not have deleted the clause had he known of the higher prices being paid by Arkla to the government. However, plaintiff's testimony reveals that in 1969 Hall had an interest in a well under contract to Texas Gas Producing Company with gas produced therefrom being sold to the latter. At that time the well had nearly depleted, and the pressures were dropping. In order to keep from having to cap the well, Hall contacted defendant who agreed to take over the well and use its pipe lines wherein the pressures would be lower, thus allowing the well to keep producing. In order to contract with defendant, plaintiff had to execute an amendment deleting the Favored Nations clause to comply with the FPC's more recent regulations prohibiting the inclusion of such a clause in a gas purchase contract. By using defendant's pipe lines, Hall was able to sell the gas without having to compress it. He testified that the main reason for executing the contract was to keep selling the gas without having to buy and operate a compressor to compress the gas.

The Louisiana Civil Code articles dealing with error of fact (C.C. Arts. 1820-1845) provide that a contract will not be considered invalid unless there was error as to the "principal cause," or "motive," for making the contract. C.C. Art. 1825. In this case the principal motive for W. E.

Hall, Jr.'s signing the contract was to continue selling gas without the expense and time of having to purchase and operate a compressor. Therefore, as correctly found by the trial court, there was no legal error of fact upon which this plaintiff can rely to vitiate the waiver.

IV. Damages

The first issue presented in determining the correctness of the award made to plaintiffs is the effect the "filed rate doctrine" of the Natural Gas Act has on the rights of plaintiffs to recover damages. Sections 4(c) and 4(d) of the act require a seller of natural gas to file a proposed rate increase with the FPC for its approval before such an increase can be effective. The only rate schedule ever filed by plaintiffs with the FPC in this instance was the original gas purchase contract in 1952. The FPC regulations, § 157.50(c), provide an exception to the foregoing rule in regard to a "small producer" as defined in the regulation, who has obtained a certificate from the commission exempting him from having to file a rate schedule as long as the increase in rate does not exceed the ceiling rate set by the commission. Several of the plaintiffs obtained certificates as small producers in October 1972, and the certificates issued to those parties were made effective to all plaintiffs in this action by the order of the FPC.

The trial court found that the plaintiffs were precluded by the Natural Gas Act from recovering damages, which are measured by a standard related indirectly to a retroactive price increase, except for the period subsequent to the issuance of the small producer certificates in October 1972. This holding is in accord with the jurisprudence construing the effect of this statute. *Interstate Natural Gas Co., Inc. v. Mississippi River Fuel Corporation,* 220 La. 43, 55 So. 2d 775 (1951); *Ashland Oil & Refining Co. v. Federal Power Commission,* 421 F.2d 17 (1970); *Socony Mobile Oil Co. v. Brooklyn Union Gas Co.,* 299 F.2d 692 (1962).

Although plaintiffs claim quantum based on an amount commensurate with the difference between the price they received and that which they would have received had they been granted a price increase in 1962, they contend their suit is for damages and not for a retroactive price increase, and is therefore not affected by the Natural Gas Act.

Plaintiffs' alternative theory of recovery is that they should recover for damages caused by the fraudulent concealment by defendant of the fact it was paying a higher price to the United States for gas which prevented them from timely filing for a change in rate schedule with the FPC.

Neither of these positions is tenable. The action for damages to be successful necessarily assumes a price increase would have been granted by the FPC. That such approval would have been granted by the commission is highly speculative and cannot serve as a basis for an award of damages. See *Interstate Natural Gas Co. v. Southern Cal. Gas Co.,* 102 F. Supp. 685 (1952).

The trial court did not make a finding that defendant was guilty of fraudulent concealment, and we find the evidence is insufficient to support such an allegation.

The evidence shows that in the fall of 1961 several of the officials of defendant were concerned that the royalty price negotiated with the United States might have the effect of activating the price adjustment clause of plaintiffs' contract. The question was submitted to defendant's attorneys who advised that payment of royalty would not have this legal effect. Defendant did not make any disclosure to plaintiffs at that time or subsequently which would have allowed plaintiffs the opportunity to seek a determination before an appropriate tribunal. In early 1974 when inquiries were made by plaintiffs, the officials of Arkla were uncooperative and evasive in answer to questions concerning the possible purchase of gas from the United States. Although

this failure to inform and later evasiveness on the part of defendant was not commendable, it nevertheless does not prove fraudulent concealment. A party alleging fraud has the burden of establishing it by more than a mere preponderance of the evidence. The conclusive proof required must be by clear and convincing legal evidence. *Placid Oil Co. v. Taylor*, 345 So. 2d 254 (La. App. 3rd Cir. 1977); *Capital Bank & Trust Co. v. Core*, 343 So. 2d 284 (La. App. 1st Cir. 1977); and *Jackson v. Fontenot Building Inc.*, 314 So. 2d 516 (La. App. 1st Cir. 1975). For these reasons plaintiffs cannot be awarded damages bearing any relationship to an increase in gas prices for the period prior to October 1972.

Defendant primarily complains on appeal of the admissibility and probative value of the plaintiffs' evidence to sustain any award of damages. The evidence relied on by plaintiffs to prove their damages for breach of contract was the testimony of Frank J. Hall, a plaintiff having substantial gas holdings in Sligo that are subject to the contract. The evidence shows Hall to be a knowledgeable oil and gas operator with many years of experience in the exploration for, production, and sale of natural gas. Hall gathered all of the pertinent data necessary to calculate the damages to which plaintiffs claim they are entitled for the entire period from September 1961 through December 1975. Based on the data obtained, Hall, with the assistance of his accountant who is also a plaintiff in this suit, prepared schedules to reflect a comparison in the price being paid by Arkla to plaintiffs with that being paid to the United States for each year during this fourteen-year period. Under the instructions and supervision of Hall, the accountant further prepared summaries which related the differential in the price of gas to the volumes sold by plaintiffs to defendant for the period. Built into these summaries are the adjusting factors which Hall considered necessary to render the prices comparable. The summaries were further extended

to calculate and show the accrual of the legal rate of interest on the sums claimed during the period.

Defendant attacks the admissibility of the above described evidence contending that the schedules and summaries were made from information that has not been offered in evidence. There is a well recognized rule that summaries of voluminous material or documents may be introduced in evidence provided the opposing party has equal access to the material from which the summaries were prepared. Wigmore, "Evidence," (1972) Vol. IV., § 1230, at page 535, *Northern Pac. Ry. Co. v. Keyes*, 91 F. 47 (1898); *Sam Macri & Sons, Inc. v. U.S.A.*, 313 F.2d 119 (1963); *Midcontinent Broadcasting Company v. North Central Airlines, Inc.*, 471 F.2d 357 (1973). In the instant case defendant was in the superior position and had full access to all data on which Hall relied. A substantial part of the information gathered by Hall was from records of defendant's accounting department which were inspected under discovery procedure. Hall utilized division orders prepared by defendant to determine percentages of ownership in each drilling unit over the period in question. To establish production quantities of raw gas and liquid hydrocarbons, he relied partially on records in his own office and on information obtained from the State Department of Conservation. Defendant had equal access to all such data. Although there are others who would have better qualifications because of specialized training to make such an analysis, Hall has exhibited a sufficient familiarity with the underlying principles of gas pricing and methods of accounting to allow the admissibility into evidence of his testimony and the summaries prepared under his supervision for whatever weight they may have.

Defendant also attacks the weight to be given the calculations made by Hall and his accountant as it contends they are self-serving. While this evidence is to some extent self-serving, this reason alone is not sufficient to reject it in the

absence of any rebuttal evidence showing that the evidence as a whole was unreliable and not prepared with any degree of objectivity.

Defendant questions the acceptance of the summaries also on the basis that Hall has calculated plaintiffs' damages by a determination of the difference between gas prices paid to the United States and the plaintiffs and by assuming the plaintiffs' contract was revised to provide for processing of raw gas at defendant's plant and payment of the entire value of extracted liquids to them and assuming that all condensate was processed by defendant free of charge and the proceeds paid to them. Defendant contends these adjustments made by Hall are improper and give plaintiffs advantages which were never intended by the "pertinent factors" adjustments provided in the Favored Nations clause of the contract. The comparability provisions of the Favored Nations clause of this agreement provides:

> . . . provided that in determining whether a given price is in fact "higher" than the price provisions of this contract, the inquiry shall not be limited to the actual prices stipulated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts, such as point of delivery, basis of measurement, taxes, dehydration, and delivery pressures (provided that the number of years stated as the terms during which the two contracts shall respectively remain in force and effect shall not be a factor to be considered for purposes of comparison under this paragraph) and the price to be thereafter payable in accordance with this paragraph for gas delivered hereunder shall be adjusted accordingly insofar as may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts.

A literal reading of this provision requires the interpretation that all pertinent factors necessary to properly

equate the price of gas shall be given consideration and those specified are illustrative only. The only factor to be excluded is the length of the contract term. We find the adjustments made by Hall in the summaries were within the purview of this provision.

Plaintiffs also calculated two other items of compensatory damages claimed by all or some of the plaintiffs. The first relates to losses occurring because of income tax advantages which would have inured to all plaintiffs under depletion allowances had they received the increases in price during the years they were due rather than in a lump amount under a court award. The second refers to losses to several of the plaintiffs who contend they would have drilled an additional well in the field had they been advised timely by defendant of the facts which would have enabled them to have obtained a price increase in 1961. Both the damages for loss of the depletion allowance and the loss arising from the lack of knowledge concerning the increased gas prices are consequential damages which cannot be recoverable for the breach of an obligation to pay money. La. C.C. Art. 1935.

Defendant next complains that the method of the trial court in arriving at the award of damages was erroneous. The trial court accepted the summaries prepared by Hall as competent evidence on which to award damages, but was confronted with the problem that the summaries were prepared for the total period from September 1961 through December 1975. In order to limit plaintiffs' award for the period of October 1972 through December 1975, the court reduced the total damages reflected by Hall's summary by a percentage of sixty-eight percent.

Defendant contends this method is erroneous as it gives no consideration to the differences in the actual volumes of gas produced and sold in the period for which damages are allowed and assumes that they have remained constant over the entire period since 1961. Further, defendant shows

Hall's summary contains a calculation of interest for the entire period of fourteen years, and therefore, the method used by the court allows recovery of interest on sums not recoverable. Defendant also illustrates that the procedure followed by the court does not compensate each plaintiff equally for the volume of gas sold by him during the allowable period.

We recognize that during the presentation of evidence on damages, the trial court suggested to the parties on several occasions the possibility of an appointment of an expert to assist the court in this very complex matter. As this suggestion was not pursued, the court had no means at hand to accurately reduce the summaries in evidence to the period for which plaintiffs were entitled to damages, and therefore, resorted to the percentage of allocation utilized. Plaintiffs are only entitled to damages representing a difference between the price paid by the defendant to the United States and the price paid to them, after applying the adjustments for pertinent factors, for the period from October 1, 1972, through December 31, 1975. They are additionally entitled to interest at the legal rate of seven percent on the increased amount owed to them as it accrued each month during this period. La. C.C. Arts. 1938 and 2553(3).

We must agree that the method used by the trial court does not achieve this result. These calculations cannot correctly and accurately be made by this court from the record before us. Under La. C.C.P. Art. 2164 this court may render any judgment which is just, legal, and proper, including the power to remand for a new trial in the interest of justice. See *Guilott v. Guilott,* 326 So. 2d 551 (La. App. 3rd Cir. 1976).

While we are reluctant to protract this litigation, we find it necessary to remand the case in the interest of justice to both parties for the limited purpose of a recalculation of

the damages and the interest to be allowed each plaintiff in accord with the views expressed herein.

The district court may in its discretion appoint an expert in the field of oil and gas accounting to perform the necessary calculations based insofar as possible on the evidence already in the record in this matter. The court may take whatever additional evidence that is found necessary to calculate damages in accord with these views.

For the foregoing reasons, the judgment is set aside, and the case is remanded for a new trial restricted to the assessment of damages. Costs of this appeal are assessed equally to plaintiffs and defendant. Assessment of all other costs shall await final determination of this cause.

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

Office of the Clerk, Shreveport, Louisiana. June 6, 1978

As counsel of record in the captioned case, you are hereby notified that the application or applications for rehearing filed by Plaintiffs-Appellants and Defendant-Appellant have this day been En Banc. Denied.

FRANK J. HALL, et al

versus

ARKANSAS LOUISIANA GAS CO.

Docket No. 13,549

Sincerely,
HAROLD L. BOOTH
Clerk of Court

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

September 22, 1978

FRANK J. HALL, ET AL

v.

ARKANSAS LOUISIANA GAS COMPANY

No. 62,560

In re: Frank J. Hall, et al applying for Certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Caddo

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Writ granted.

PFC
JWS
ATJR
JAD
WFM
JLD

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans

September 22, 1978

/s/ FRANS J. LA BRANCHE, JR.
Clerk of Court

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

September 22, 1978

FRANK J. HALL, ET AL

VS.

ARKANSAS-LOUISIANA GAS COMPANY

No. 62,580

In re: Arkansas Louisiana Gas Company, applying for Certiorari, or Writ of Review, to the Court of Appeal, Second Circuit, Parish of Caddo.

Writ denied.

PFC
FWS
ATJR
JAD
WFM
JLD

SANDERS, C.J., would grant this application, so that it can be considered along with No. 62,560, which has been granted.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
September 22, 1978

/s/ FRANS J. LA BRANCHE, JR.
Clerk

SUPREME COURT OF LOUISIANA

No. 62,560

FRANK J. HALL, ET AL

v.

ARKANSAS-LOUISIANA GAS COMPANY

ON WRIT OF CERTIORARI TO THE
SECOND CIRCUIT COURT OF APPEAL
PARISH OF CADDO, STATE OF LOUISIANA

March 5, 1979

MARCUS, Justice*

Plaintiffs, royalty interest owners, working interest owners, overriding royalty interest owners and unleased mineral interest owners, instituted this suit against Arkansas-Louisiana Gas Company to recover damages arising from an alleged breach of a gas purchase contract.

Planitiffs, in their original and amended and supplemental petitions, alleged that on January 11, 1952, they, or their respective ancestors in title, entered into a gas purchase agreement with defendant wherein plaintiffs agreed to sell to defendant their natural gas, and the natural gas owned by their respective lessors, produced from certain described lands in the Sligo Gas Field, Bossier Parish, Louisiana. This agreement, by its terms, was to continue in effect from January 11, 1952, through June 1, 1980. Under the terms and provisions of this agreement, defendant was to pay a fixed schedule of prices for the natural gas delivered to it from plaintiffs. This agreement also contained a price adjustment provision, com-

* Chief Judge William A. Culpepper participated in this decision as Associate Justice Ad Hoc sitting in the place of Chief Justice Sanders, retired.

monly referred to as a favored nations clause, which provided in pertinent part:

> If at any time during the term of this agreement Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Gas Field at a higher price than is provided to be paid for gas delivered under this agreement, then in such event the price to be paid for gas thereafter delivered hereunder shall be increased by an amount equal to the differences between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract. . . . It is agreed that any such higher price for gas delivered hereunder shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the effective date of such subsequent contract, all subject, however, to any rules and regulations of the Office of Price Stabilization or any other regulatory body having jurisdiction.

Plaintiffs alleged that since January 11, 1952, they and their respective lessors, have sold substantial quantities of natural gas produced from wells in the Sligo Gas Field to defendant at the prices stipulated in the fixed schedule of prices as contained in the agreement. Plaintiffs further alleged that from September 1961 until the date of the institution of this action, defendant purchased from another party seller (the United States government) natural gas produced from wells located in the Sligo Gas Field at a higher price (including prices paid for both the residue or dry gas and the liquid hydrocarbons or plant products extracted from the United States government's gas delivered to defendant's pipeline system) than it was paying to plaintiffs pursuant to the January 11, 1952 gas purchase agreement for plaintiff's dry or residue gas and liquid hydrocarbons or plant products extracted from plaintiff's gas and delivered into defendant's pipeline system. By

paying a higher price to another party seller for natural gas produced from wells in the Sligo Gas Field, plaintiffs contended that defendant activated the provisions of the favored nations clause and legally obligated itself to advise plaintiffs of these facts and pay plaintiffs the higher price being paid to another party seller (the United States government) for natural gas produced from wells in the Sligo Gas Field. Plaintiffs contended that they were entitled to such higher price from the first time defendant paid such higher price to another party seller. Plaintiffs averred that defendant had at no time during the existence of the January 11, 1952 agreement informed plaintiffs, or any of their representatives, of the fact that it had been paying a higher price to another party seller for natural gas produced from wells in the Sligo Gas Field. Plaintiffs thus argued that defendant had breached the favored nations clause of their agreement by failing to pay plaintiffs a price equal to the highest price paid by defendant to any other party seller for natural gas produced from wells in the Sligo Gas Field. Plaintiffs sought damages equal to the difference between the price paid to them and the highest price paid by defendant to any other party seller for such natural gas during the period of time that defendant purchased natural gas from the United States government.

In its answer, defendant admitted that it purchased substantial quantities of natural gas from plaintiffs pursuant to the January 11, 1952 gas purchase agreement. Defendant, however, averred that it had not at any time paid anyone a price higher than that paid plaintiffs for natural gas purchased from the Sligo Gas Field and it specifically denied that it was purchasing any natural gas produced from the Sligo Gas Field from the United States government. Further answering the petition, defendant alleged that the only contract between it and the United States government relating to the production of natural gas from the Sligo Gas Field was an oil, gas, and mineral lease

dated January 23, 1961, and executed by the United States Department of the Interior in favor of Union Producing Co. and covering land situated in the Sligo Gas Field. Defendant averred that it acquired an undivided 15% interest in this lease by virtue of an assignment from Union Producing Co. on January 30, 1961, and argued that this lease did not constitute an offer or contract to sell natural gas, but, rather, granted defendant only the right to explore for, remove, and dispose of oil and gas. Hence, defendant contended, the only payments made by it to the United States government were the payments of royalty (based on the value of the natural gas and other products extracted from the natural gas) as provided in the lease and not payments for the purchase of natural gas from the United States government.

By supplemental and amended answer, defendant further alleged that the Federal Power Commission, pursuant to the provisions of the Natural Gas Act (15 U.S.C. § 717 a-w) had sole jurisdiction over the sale of natural gas by plaintiffs to defendant under the January 11, 1952 gas purchase agreement upon which this action was founded. Defendant contended that, pursuant to 15 U.S.C. § 717c (d),[1] plaintiffs were required to file and give notice of any

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[1] 15 U.S.C. § 717c(d) provides:

> Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty day's notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

proposed increase of rates, including any contractually-authorized rate increase, above the authorized initial rate and that, as plaintiffs had failed to file for such rate increase allegedly allowable under the favored nations clause, they were not lawfully authorized to collect the increased rate in this action. In addition, defendant averred that one of the named plaintiffs, W. E. Hall, Jr., executed, on May 25, 1969, an amendment to the gas purchase agreement of January 11, 1952, which deleted the favored nations clause from his contract with defendant. In view of this amendment, defendant contended that W. E. Hall, Jr. had no cause or right of action for any claim against defendant arising on or after May 25, 1969.

The trial court first held that payments made by defendant to the United States government under the terms of the lease constituted a "purchase from another party seller" within the meaning of the favored nations clause contained in the January 11, 1952 gas purchase contract entered into between plaintiffs and defendant. The court reasoned that defendant, in making payments to the United States government under its lease, was acting in a dual capacity: it was paying royalty as lessee and purchasing gas as pipeline purchaser. The court determined that defendant failed to advise plaintiffs of this fact or pay them the higher, contractually-authorized price. Having held that defendant breached the original gas purchase contract, the trial court next concluded that defendant would only be liable for damages (measured by the difference between the price paid the United States government and the price paid plaintiffs) for the period subsequent to the issuance of small producer certificates to plaintiffs in October 1972. The court reasoned that plaintiffs could not recover a "raise in prices" for the period prior to October 1972 because they had never obtained approval of a higher rate or price from the Federal Power Commission as required by 15 U.S.C. § 717c-d. The trial judge noted, however, that the regulations of the Commission (18 C.F.R. § 157.40) provide

that a "small producer," as defined in the regulations, may obtain a small producer certificate from the Commission exempting it from the necessity of filing a rate schedule in order to obtain contractually-authorized rate increases if the rate increase does not exceed the ceiling rate set by the Commission. The trial judge determined that plaintiffs had obtained such "small producer certificates" in October 1972 and concluded that plaintiffs would be entitled to a recovery of damages for the period from October 1972 through December 1975. The trial court then determined that, because W. E. Hall, Jr. amended his contract with defendant on May 25 1969, and deleted the favored nations clause from his contract, he had no claim against defendant under the favored nations clause subsequent to May 25, 1969, and would be entitled to no recovery of damages.

The court of appeal affirmed the trial court, holding that defendant had breached the favored nations clause of its contract with plaintiffs and that plaintiffs were entitled to damages measured by the difference between the price paid by defendant to the United States government and the price paid to plaintiffs (after applying adjustments for pertinent factors) only for the period from October 1, 1972 through December 31, 1975.[2] In addition, the court of appeal held that W. E. Hall, Jr. had waived any claim for damages against defendant for the period subsequent to May 25, 1969, by entering into an amended contract with defendant on that date which deleted the favored nations clause from his contract.[3]

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[2] The court of appeal found that the calculations used by the trial judge to determine the amount of damages for the period from October 1, 1972 through December 31, 1975 were based on plaintiffs' calculations representing the entire period of the breach (September 1961 through December 31, 1975). The appellate court thus ordered the case remanded for a new trial restricted to the assessment of damages.

[3] 359 So. 2d 255 (La. App. 2d Cir. 1978).

We denied defendant's application for a writ to review the correctness of the court of appeal's decision.[4] However, on application of plaintiffs, we granted a writ limited to a consideration of whether the court of appeal was correct in denying an award of damages to plaintiffs for the period of defendant's breach prior to October 1972 and whether it was correct in holding that W. E. Hall, Jr. "waived" any claim for damages against defendant by entering into an amended contract on May 25, 1969, which deleted the favored nations clause from his contract.[5]

We note, at the outset, that this controversy involves plaintiff's claims for damages arising from defendant's breach of a gas purchase contract. The claims herein are not founded upon any liability created by the Natural Gas Act, but, rather, are founded upon a private contract deriving its force and effect from state law. There is no issue herein as to the reasonableness of the price, nor any attempt to adjudicate a proper rate, as defendant argues. Issues involving contract violation were not made subject to the cognizance of the Federal Power Commission by the enactment of the Natural Gas Act. Pan American Petroleum Corp. v. Superior Court, 366 U.S. 656 (1961). The regulatory system of the Natural Gas Act is built upon private contracts, as modified by the Act, and the Act evinces no purpose to abrogate private gas purchase contracts. United Gas Pipe Line Co. v. Mobile Gas

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[4] 362 So. 2d 1120 (La. 1978). It is well settled that, when both parties apply for a writ of review, this court's denial of the application made by one of the parties constitutes our final determination upon the matters included therein. This court then will not pass a second time upon these matters at the hearing on review granted through the application of the other party. Jordan v. Travelers Insurance Company, 257 La. 995, 245 So. 2d 151 (1971). Hence, any questions relating to the determinations made by the courts below that defendant breached the favored nations clause of its gas purchase contract with plaintiffs are not now before us.

[5] 362 So. 2d 798 (La. 1978).

Service Corp., 350 U.S. 332 (1956). A determination of the appropriate measure of compensatory damages due plaintiffs as a result of defendant's breach of a private contract is, we believe, a matter particularly within the purview of our state law and state courts.

It is conceded by the parties before us that plaintiffs' recovery of damages arising from defendant's breach of the contract is to be measured by the difference between the price paid by defendant to the United States government and the price paid by it to plaintiffs (after adjustment for pertinent factors as indicated in the court of appeal opinion). The first issue presented for our resolution is a determination of whether plaintiffs are entitled to a recovery of the difference between such prices for the entire period of defendant's breach of the contract (September 1961 through December 31, 1975) or whether plaintiffs are precluded from a recovery of damages representing the period prior to October 1972.

Unless the Federal Power Commission otherwise orders, no change shall be made by any natural gas company in any rate received by it for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, or contract relating thereto, except after thirty days' notice to the Commission and to the public. 15 U.S.C. § 717c(a) & (d). Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when such changes will go into effect. *Id.* (d). A "small producer" (as defined by the Commission's regulations) may obtain a "small producer certificate" exempting it from the requirement of having to file a rate schedule as long as the increase in rate does not exceed the ceiling rate set by the Commission. *See* 18 C.F.R. § 157.40. Several of the plaintiffs obtained "small producer certificates" in October 1972, and the certificates

issued to those parties were made effective as to all plaintiffs by order of the Commission. It is not disputed by the parties before us that the only rate schedule ever filed by plaintiffs with the Commission was the original gas purchase contract entered into on January 11, 1952. The trial court and court of appeal denied plaintiffs an award of damages arising from defendant's breach of contract for the period of time (*i.e.,* prior to October 1972) during which plaintiffs were required to file new rate schedules with the Commssion reflecting their entitlement under the contract, to a higher price for their natural gas sold to defendant.

La. Civ. Code art., 2040 provides:

> The condition is considered as fulfilled, when the fulfillment of it has been prevented by the party bound to perform it.

It is difficult to attach a precise meaning to the rule as it is literally set forth in the text of article 2040. This court, however, has long recognized that the English translation of this provision from the French articles as written in the Louisiana Civil Codes of 1825 (article 2035) and 1808 (article 78) is inaccurate and the French text has always prevailed in decisions of this court. *See* George W. Garig Transfer v. Harris, 226 La. 117, 75 So. 2d 28 (1954); Southport Mill v. Friedrichs, 171 La. 786, 132 So. 346 (1931); Morrison v. Minton, 163 La. 1065, 113 So. 456 (1927); Walls v. Smith, 3 La. 498 (1832) (dissenting opinion). Article 2040, properly interpreted, means that the condition is considered fulfilled, when it is the debtor, bound under that condition, who prevents the fulfillment. George W. Garig Transfer v. Harris, *supra;* Southport Mill v. Friedrichs, *supra;* Morrison v. Minton, *supra.* This rule is but an application of the long-established principles of law that he who prevents a thing may not avail himself of the non-performance he has occasioned and that one

should not be able to take advantage of his own wrongful act. *See* Cox v. Department of Highways, 252 La. 22, 209 So. 2d 9 (1962).

The favored nations clause of the contract entered into between plaintiffs and defendant provided that, if defendant purchased from another party seller gas produced from any wells located in the Sligo Gas Field at a higher price than was provided to be paid for plaintiffs' gas, defendant was bound to pay plaintiffs for the gas delivered under their contract at a price increased by an amount equal to the differences between the price provisions of plaintiffs' contract with defendant and the concurrently effective higher price provisions of defendant's contract with the other party seller. To realize this higher, contractually-authorized price, plaintiffs, pursuant to the Natural Gas Act, were required to file new rate schedules with the Commission. However, plaintiffs were effectively precluded from making the requisite filings because they were not, at any time, informed by defendant that it was, in fact, paying a higher price to another party seller. Although defendant was only bound to pay plaintiffs a higher price if plaintiffs filed new rate schedules with the Commission, it is apparent that defendant prevented the fulfillment of that condition (plaintiffs filing with the Commission) by failing to inform plaintiffs of its contractual arrangements with the United States government. Pursuant to article 2040 and this court's jurisprudence interpreting that article, the condition (that plaintiffs file new rate schedules) is considered fulfilled. Hence, plaintiffs' failure to file the new rate schedules in no way precludes plaintiffs recovery of damages for the entire period of defendant's breach (September 1961 through December 31, 1975) as measured by the difference in the price defendant paid the United States government and the price defendant paid plaintiffs. To hold otherwise would be in clear contravention of the

spirit and intent of article 2040 and the jurisprudence of this court.[6]

The court of appeal also reasoned that plaintiffs' recovery of damages for the period of defendant's breach prior to October 1972 must be denied because such recovery would necessarily assume that a price increase would have been granted by the Commission. The appellate court concluded that the issue as to whether such approval would have been granted by the Commission was highly speculative and could not serve as a basis for an award of damages.

Actual damages arising from a breach of contract must be proven; they cannot be merely speculative or conjectural. Brown v. Producers' Oil Co., 134 La. 672, 64 So. 674 (1914). It must appear reasonably certain that the amount of damages rests upon a certain basis. Brown v. Producers' Oil Co., *supra*. Such proof need be only by a preponderance of the evidence; proof by direct or circumstantial evidence is sufficient to constitute a preponderance when, taking the evidence as a whole, such proof shows that the facts or causation sought to be proved is more probable than not. *Cf.* Jordan v. Travelers Insurance Co., 257 La. 995, 245 So. 2d 151 (1971). The sufficiency of proof of damages must be determined in relation to the particular contract at issue and the circumstances surrounding its

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[6] We do not believe the debtor's bad faith or fraud (or lack thereof) is relevant to a determination of whether it has prevented the fulfillment of a condition under which it is bound. Planiol, in commenting upon the French counterpart of our article 2040, states, "[t]he act of the debtor, even when free from fraud, causes to the creditor a prejudice for which reparation is due, and the most complete reparation which can be offered to the creditor is the execution of the obligation, as if the condition had been accomplished. The act of the debtor can consist of any act whatsoever which prevents the realization of the condition." 2 M. Planiol, Treatise on the Civil Law, No. 388 A (La. St. L. Inst. transl. 1959).

breach. The question of the certainty of proof of damages becomes a matter for decision in each individual case. Angelloz v. Humble Oil & Refining Co., 196 La. 604, 199 So. 656 (1940).

At trial, a November 8, 1976 order of the Commission was produced which indicated the maximum rates to which plaintiffs would have been entitled if contractually authorized and *if* proper filing procedures had been followed (Exhibit D-59). The Commission clearly indicated in its order that it would have approved such rates. No evidence was adduced by defendant to establish that Commission approval would have been unlikely. It is our opinion that, taking the evidence as a whole, plaintiffs' proof shows that it was more probable than not that the Commission would have approved a contractually-authorized price increase if the proper filing procedures had been followed. It appears reasonably certain that the amount of damages claimed by plaintiffs rests upon a certain basis.[7]

In sum, it is our opinion that plaintiffs are entitled to a recovery of an award of damages measured by the difference between the price defendant paid the United States government and the price defendant paid plaintiffs (after applying various adjustments for pertinent factors) for the entire period of defendant's breach of contract from September 1961 through December 31, 1975.

We must next determine whether W. E. Hall, Jr. waived any claim against defendant for damages arising on and after May 25, 1969, because, on that date, he entered into a contract with defendant wherein he deleted the favored nations clause from the January 11, 1952 agreement. Plaintiffs argue that Hall executed the May 25, 1969 agreement

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[7] We note that plaintiffs make no claim that they would have been entitled to a price increase under their contract in excess of the respective area base rate ceilings for sales of natural gas as established by order of the Commission.

without being informed by defendant that it had activated the favored nations clause of the original agreement and that defendant misrepresented facts to Hall by informing him that it was paying plaintiffs the highest prices that it was paying any other party sellers for gas produced from the Sligo Field. Plaintiffs contend the May 25, 1969 agreement is void because Hall executed it under an error of fact.

Hall's testimony indicates that in 1969 he possessed an interest in a well (referred to as the Harvey well) under contract to Texas Gas Producing Company (Texas) with the natural gas produced therefrom being sold to Texas. In 1969, the Harvey well was nearly depleted and its pressure was dropping. The pressure on the Texas pipeline serving the Harvey well was too high for such gas to be carried through the pipeline. Hall stated that he was confronted with a situation where he was either going to have to "junk the well," buy a compressor and continue selling to Texas, or obtain a release from Texas and sell to another party with a lower pipeline pressure. After learning that the pressure on defendant's pipelines was lower than that on Texas' pipelines, Hall obtained a release from Texas and negotiated with defendant to take the gas from the Harvey well. An agreement was executed wherein defendant amended the January 11, 1952 gas purchase agreement to also cover Hall's share of the production from the Harvey well. This amendment also deleted the favored nations clause from the January 11, 1952 gas purchase contract. Hall maintained that had he been aware of the fact that defendant was paying a higher price to another party seller in the Sligo Field, he would not have agreed to the deletion of the favored nations clause. Hall also stated that his primary purpose in executing the May 25, 1969 agreement with defendant was to avoid having to purchase and operate a compressor and to be able to continue selling gas from the Harvey well.

Consent of the parties legally given is a requisite to the validity of a contract. La. Civil Code art. 1779. Consent being the concurrence of intention in two or more persons, with regard to a matter understood by all, reciprocally communicated, and resulting in each party from a free and deliberate exercise of the will, it follows that there is no consent where it has been produced by error. La. Civil Code art. 1819. An error of fact proceeds either from ignorance of that which really exists, or from a mistaken belief in the existence of that which has none. La. Civil Code art. 1821. Errors may exist as to all the circumstances and facts which relate to a contract, but it is not every error that will invalidate it. La. Civil Code art. 1823. To have that effect, the error must be in some point, which was a principal cause for making the contract and when there are several this principal cause is called the *motive* and means that consideration without which the contract would not have been made. *Id.* & art. 1825. No error in the motive can invalidate a contract, unless the other party was apprised that it was the principal cause of the agreement, or unless from the nature of the transaction it must be presumed that he knew it. La. Civil Code art. 1826. These articles of our Code simply mean that error in the determining motive, or principal cause, of a contract vitiates consent and invalidates the contract. Error as to a subsidiary motive has no effect upon the validity of the contract. Cryer v. M & M Manufacturing Co., Inc., 273 So. 2d 818 (La. 1972); Stack v. Irwin, 246 La. 777, 167 So. 2d 363 (1964); Carpenter v. Skinner, 224 La. 848, 71 So. 2d 133 (1954).

A review of the record convinces us that the error relied upon by plaintiffs to invalidate the May 25, 1969 agreement was not an error in the determining motive, or principal cause, of the agreement. Hall's testimony clearly indicates that the determining motive, or principal cause, of the agreement was his desire to continue selling gas from the Harvey well and to avoid purchasing and operating a

compressor for the Harvey well. Any error relating to the issue as to whether defendant had activated the favored nations clause of the original agreement was only error as to a subsidiary motive and has no effect upon the validity of the May 25, 1969 agreement. Hence, we determine that the May 25, 1969 agreement is not invalid as having been executed by Hall under an error of fact.

We construe plaintiffs' allegations as a contention that the misrepresentations and omissions of defendant invalidated the contract because they constituted fraud.

Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantages to the one party, or to cause an inconvenience or loss to the other. La. Civil Code art. 1847. Two elements are essential to constitute legal fraud: the intention to defraud and loss or damage or a strong probability of loss or damage. Buxton v. McKendrick, 223 La. 62, 64 So. 2d 844 (1953). It is well setted that one who alleges fraud has the burden of establishing it by legal and convincing evidence since fraud is never presumed, and that to establish fraud exceptionally strong proof must be adduced. Buxton v. McKendrick, *supra;* Sanders v. Sanders, 222 La. 233, 62 So. 2d 284 (1952).

The trial court made no finding that defendant fraudulently concealed or misrepresented facts relating to its activation of the favored nations clause. The court of appeal, in affirming the trial court's determination on this issue, found the evidence insufficient to support plaintiffs' allegation of fraud. We have reviewed the record and it is our opinion that the determination made by the lower courts on this issue is correct. Plaintiffs failed to prove that defendant possessed the requisite intent to defraud.[8] Hence,

[8] In fact, it appears that the deletion of the favored nations clause from the original agreement was an effort by defendants to comply with the orders and regulations of the Federal Power

the May 25, 1969 agreement executed by W. E. Hall, Jr. cannot be invalidated on the basis of alleged fraudulent conduct of defendant.

In sum, we conclude that the May 25, 1969 amendment to the original gas purchase contract executed by W. E. Hall, Jr. is a valid and enforceable agreement. Since the effect of this agreement was to delete the favored nations clause from the original contract, W. E. Hall, Jr. has no claims for damages against defendant arising on or after May 25, 1969.

Decree

For the reasons assigned, judgment of the court of appeal is amended to allow plaintiffs (except W. E. Hall, Jr.) an award of damages measured by the difference between the price paid the United States government and the price defendant paid plaintiffs for the entire period of defendant's breach of contract from September 1961 through December 31, 1975; W. E. Hall, Jr.'s recovery of damages against defendant is to be measured for the period of time from September 1961 through May 24, 1969. The case is remanded to the district court for assessment of damages in accordance with the views herein expressed.

Commission. By Order No. 232 A (25 F.P.C. 609), issued March 31, 1961, the Commission amended its regulations so as to provide that indefinite price escalation clauses (including favored nations clauses) in sales contracts executed on or after April 3, 1961, for the sale or transportation of natural gas subject to the jurisdiction of the Commission would be inoperative and of no effect at law. By Order No. 242 (27 F.P.C. 339), issued February 8, 1962, the Commission further amended its regulations to provide for the rejection of contracts containing such indefinite escalation clauses. *See* 18 C.F.R. §§ 154.93, 157.14 and 157.25.

SUPREME COURT OF LOUISIANA

No. 62560

FRANK J. HALL et al.

Versus

ARKANSAS-LOUISIANA GAS COMPANY

DIXON, Justice (concurring)

I fully subscribe to the opinion, but believe C.C. 2040 is applicable only by analogy, and that C.C. 2040 is probably a clarification of the original French text, not an "inaccurate" translation.

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112
FOR IMMEDIATE RELEASE

On the 9th day of April, 1979, the following action was taken by the Supreme Court of Louisiana in the cases listed below:

* * *

REHEARINGS DENIED:

* * *

62,560 HALL v. ARK-LA. GAS

FIRST JUDICIAL DISTRICT COURT

CADDO PARISH, LOUISIANA

Number 225,699

FRANK J. HALL, et al

versus

ARKANSAS LOUISIANA GAS COMPANY

JUDGMENT

The Louisiana Supreme Court in the case of "*Frank J. Hall, et al v. Arkansas Louisiana Gas Company*, Docket Number 62,560, Supreme Court of Louisiana" on March 5, 1979 rendered a judgment on the merits of this contractual dispute. The judgment of the Louisiana Supreme Court dated March 5, 1979 became definitive on April 9, 1979 when the Louisiana Supreme Court denied Arkansas Louisiana Gas Company's "Application For a Rehearing".

IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the Judgment of the Louisiana Supreme Court dated March 5, 1979 and the evidence contained in the record of this case there be judgment herein in favor of the following Plaintiffs against the Defendant, ARKANSAS LOUISIANA GAS COMPANY, awarding to said Plaintiffs compensatory damages in the sums as hereinafter set forth for the actual losses caused by Arkansas Louisiana Gas Company's breach of contract from September, 1961 through December, 1975, to wit:

FRANK J. HALL	— $423,167.91
VIRGIL J. HALL, widow	— 115,409.27
CARLYLE W. URBAN, Trustee under Will of H. M. HARRELL	— 634,233.61

John K. Harrell, Sr.	—	79,278.48
James E. Harrell	—	79,278.48
Elva L. Weiss, widow	—	177,666.20
National American Bank, Executor under Will of Seymour Weiss	—	177,666.20
T. F. Philyaw	—	3,712.38
W. O. Cochran	—	14,513.62
D. B. McConnell	—	132,193.25
S. G. Myers	—	130,215.91
James A. Noe, Jr. and C. T. Munholland, Testamentary Executors under Wills of Mr. & Mrs. James A. Noe	—	478,528.37
Asa Benton Allen	—	67,282.56
Elaine Allen	—	65,234.33

It Is Ordered, Adjudged and Decreed that the above and foregoing Plaintiffs are awarded legal interest on $1,677,-168.06 of the above and foregoing compensatory damages from July 1, 1976 until paid and that the remaining damages, i.e. $901,212.51, shall not bear or accrue any legal interest whatsoever.

It Is Ordered, Adjudged and Decreed that pursuant to the Judgment of the Louisiana Supreme Court dated March 5, 1979 and the evidence contained in the record in this case there shall be judgment herein in favor of Mr. W. E. Hall, Jr., Plaintiff, against the Defendant, Arkansas Louisiana Gas Company, awarding to said Plaintiff compensatory damages in the sum as herein set forth for the actual losses caused by Arkansas Louisiana Gas Company's breach of contract from September, 1961 through May 24, 1969, to wit:

W. E. Hall, Jr.	—	$160,507.83

IT IS ORDERED, ADJUDGED AND DECREED that W. E. HALL, JR. is awarded legal interest on $97,208.42 of said compensatory damages from May 25, 1969 until paid and that $63,299.41 of the damages as awarded to Mr. W. E. Hall, Jr. shall not bear or accrue any legal interest whatsoever.

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs are awarded a recovery herein for all costs of this proceeding.

JUDGMENT READ, RENDERED AND SIGNED on May 17, 1979 at Shreveport, Louisiana.

/s/ C. J. BOLIN, JR.
C. J. Bolin, Jr.
District Judge

Endorsed Filed, W. C. Young, Deputy Clerk, May 17, 1979.

A True Copy—Attest

/s/ W. C. YOUNG, Deputy Clerk

[Judgment rendered January 22, 1980]

No. 14,012

COURT OF APPEAL SECOND CIRCUIT
STATE OF LOUISIANA

* * * * * * *

FRANK J. HALL, ET AL, *Plaintiffs-Appellees*

VERSUS

ARKANSAS LOUISIANA GAS COMPANY, *Defendant-Appellant*

* * * * * * *

Appealed from the First Judicial District Court for the Parish of Caddo, Louisiana

Honorable C. J. Bolin, Jr., Judge

* * * * * * *

BLANCHARD, WALKER, O'QUIN & ROBERTS

By: Robert Roberts, Jr., Marlin Risinger, Jr., and W. Michael Adams

Attorneys for Defendant-Appellant, Arkansas Louisiana Gas Company

WIENER, WEISS, MADISON & HOWELL

By: James Fleet Howell

Attorneys for Plaintiffs-Appellees, Frank J. Hall, et al

* * * * * * *

Before PRICE, MARVIN and JONES, JJ.

MARVIN, J.

On the original appeal of this case in 1978, we affirmed a judgment activating a *favored nation clause* in a 1952 gas purchase contract which escalated the price of interstate natural gas purchased from the several plaintiffs by defendant Arkla. Plaintiffs there claimed that damages should have been assessed from September 1961, when Arkla began paying a higher price to another seller (the United States), through the year 1975 when suit was brought.

We affirmed the lower court's determination that all plaintiffs except W. E. Hall were entitled to damages only from October 1, 1972 (when plaintiffs were excused by FERC from having to meet FERC requirements to obtain a price increase). W. E. Hall's demands were dismissed on an exception of no cause of action because he had executed an agreement on May 25, 1969, deleting the favored nation clause from his 1952 contract.

The original damage award to plaintiffs totaled more than $900,000. This amount was determined by comparing the price paid to plaintiffs and to the government (for gas and products extracted from the gas) for the entire period (1961-1975). The lower court then proportionately reduced the amount for the entire period to determine the amount for 1972-1975. We remanded because neither party had *pursued* the lower court's suggestion for expert assistance and had not provided the lower court with *means* to accurately reduce or extract the 1961-1975 data to facilitate determination of the damages for the 1972-1975 period.[1]

The Supreme Court granted writs and held in 1979 that the damages for all plaintiffs, except W. E. Hall, should be measured from September 1961 through 1975 and that W. E. Hall should be allowed damages for the period from September 1961 until May 25, 1969 (when he executed the

[1] 359 So.2d 255 (La. App. 2d Cir. 1978).

agreement deleting the most favored nations clause from his contract). The Supreme Court "remanded to the district court for assessment of damages in accordance with [its] . . . views . . ."[2]

On remand, the district court apparently considered that the computations and summaries used by the court in originally assessing damages for the 1961-1975 period, and which were contained in the original record and generally approved by us on the original appeal, provided a sufficient evidentiary basis for it to determine the damages to plaintiffs for that period. The district court allowed Arkla to present evidence on remand only as to the damages sustained by plaintiff W. E. Hall for the period 1961 to May 25, 1969.[3]

After remand, the lower court awarded W. E. Hall $160,507.83 and the remaining plaintiffs a total of $2,738,-888.40, which was approximately the amount the trial court reduced on the original trial to compute damages for the 1972-1975 period. Arkla appeals this judgment, contending that the award to the remaining plaintiffs exceeds both the amount paid by Arkla to the United States during the period and the maximum ceiling rates for natural gas allowed by FERC during the period, all in violation of the contract and in violation of the Natural Gas Act (15 U.S.C. § 717 a-w). Plaintiffs seek additional damages, contending that Arkla's appeal is frivolous.

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[2] 368 So.2d 984 (La. 1979).

[3] As we noted in the original appeal, Arkla was in a superior position to compile and present evidence of the difference in price paid to plaintiffs and to the *favored nation* (the United States) during the period and to compare the pertinent factors upon which the difference in price could be determined. We also noted that neither the plaintiffs nor Arkla pursued the lower court's suggestion that perhaps an expert should be appointed to assist in determining the damages. Again we mention that the pleadings and testimony fill 26 volumes of almost 5,000 pages and that the record includes almost 500 exhibits, some of which are voluminous.

The central issue in this appeal involves the sufficiency of the evidence used in comparing the difference in the price provisions of the two contracts, one contract being the gas purchase contract in 1952 containing the favored nation clause, and the other being the lease contract with the United States of America in 1961, payments under which have been construed as activating the favored nation clause of the other contract.

Under the 1961 lease, Arkla paid the government for the value of liquid hydrocarbons extracted from the natural gas and for the dry (residue) gas remaining after the extraction. Under the 1952 gas purchase contract with plaintiffs Arkla purchased "production from all wells . . . completed as commercially productive of natural gas" subject to the several terms and conditions of the contract. Section 8 of the contract, sub-part D of which contains the most favored nation clause, stipulated the price to be paid for each MCF of gas delivered to Arkla, but recognized that the stipulated price included an additional $.0025 per MCF to compensate the seller for the surrender of rights to receive the value of the LHC extracted by processes *after* delivery to Arkla. Section 8(B) apparently would allow the seller to extract condensate by a separator at the well *before* delivery to Arkla. Section 9 gives Arkla the option of purchasing free condensate that may be produced and recovered from the well by separators and obligates Arkla to pay for such condensate at a "posted" price. This section contains no language relieving Arkla of its obligation to pay the seller for the free condensate even if the condensate is delivered into Arkla's gas gathering lines and then later extracted. Some of the provisions of §§ 8 and 9 are reproduced below:

"8. Price

"(A) (1) The price to be paid by Buyer for each one thousand cubic feet of gas delivered hereunder to Buy-

er, on the basis of measurement and calculations hereinafter provided, shall be as follows:

"(a) $0.06997 from the effective date hereof through May 31, 1955;

* * * [graduated to]

"(e) $0.10596 from June 1, 1970, through May 31, 1975;

"(f) $0.11496 during the remainder of the time this agreement shall be in force and effect.

* * *

"(B) The prices . . . paid by Buyer to Seller shall constitute full payment for all gas delivered hereunder and also for all liquifiable hydrocarbons and other products delivered with such gas, it being understood and agreed that any and all products whatsoever recovered or recoverable from the production delivered hereunder by means of any type of processing operation subsequent to delivery shall be the property of Buyer or its assign without any obligation to make further payment to Seller for such products, it being further understood and agreed, however, that nothing herein is intended to deprive Seller of the right to operate a standard type oil field separator at each well subject hereto in order to remove such condensate as may be thereby extracted prior to delivery of production hereunder to Buyer. *The parties take cognizance of the fact that the aforesaid prices hereinabove provided to be paid are $0.0025 per MCF higher than would have been provided had Seller retained the right to participate in the recovery of products by such processing operations subsequent to delivery, and accordingly the aforesaid prices have been calculated and agreed to by the parties with the intention and understanding that payment of the said prices shall constitute payment for all products whatsoever recov-*

erable from the production delivered to Buyer hereunder.

"(C) If in accordance with the provisions of Paragraph (B) of Section 4 of this contract, Buyer dehydrates the gas delivered hereunder, then Seller shall pay to Buyer as a dehydration charge the sum of $0.002 for each one thousand cubic feet of gas dehydrated, which dehydration charge may be deducted by Buyer from remittances due Seller hereunder.

"(D) If at any time during the term of this agreement Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Gas Field *at a higher price than is provided to be paid for gas* delivered under this agrement, then in such event the price to be paid *for gas* thereafter delivered hereunder shall be increased by an amount equal to the *difference between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract; provided* that in determining whether a given price is in fact 'higher' than the price provisions of this contract, *the inquiry shall not be limited to the actual prices stipulated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts, such as point of delivery, basis of measurement, taxes, dehydration, and delivery pressures* (provided that the number of years stated as the terms during which the two contracts shall respectively remain in force and effect shall not be a factor to be considered for purposes of comparison under this paragraph) and the price to be thereafter payable in accordance with this paragraph for gas delivered hereunder *shall be adjusted accordingly insofar as may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts.* It is agreed that any

such higher price for gas delivered hereunder shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the effective date of such subsequent contract, all subject, however, to any rules and regulations of the Office of Price Stabilization or any other regulatory body having jurisdiction.

"9. CONDENSATE. *Buyer,* or its assign, ***shall have the option*** from time to time and upon sixty (60) days' notice, *of purchasing* all of the *free condensate* that may be produced from the subject wells and *which may be recovered* or recoverable *by the use of separators* operated in connection with such wells, and measured by liquid meter, or liquid gas ratio tests as hereinafter set forth, *and shall accept delivery of such condensate into the gas gathering lines or* at Seller's option *from Seller's storage tanks* located on the leases. Buyer, or its said assign, shall deliver to Seller written notice of the exercise of its said option and may discontinue the purchase of condensate by giving Seller sixty (60) days' written notice that it no longer desires to purchase same.

* * *

"*Buyer shall pay* or cause to be paid *to Seller,* for condensate received in accordance with the provisions of this Section, *the price posted by Buyer* or its said assign, as the case may be. Provided, however, that such posted price shall be in line with the prices established by the majority of major oil companies for similar grade condensate in fields in North Louisiana."

Emphasis by the Court.

Arkla insists that the FERC ceiling on gas, whether *wet* (before extraction of LCH [liquid hydrocarbons]) or *dry* (after extraction of LHC) is the sole basis upon which damages should have been assessed and that the price it

pays or paid to the United States for the extracted LHC is not a factor to be considered. Arkla argues that consideration of the price it pays or paid to the United States for LHC ignores and is in the face of the express language of plaintiffs' 1952 gas purchase contract that plaintiffs sold to Arkla only wet gas. The crux of this case is not that plaintiffs sold wet gas, but consideration of the purpose of the favored nation clause, the fact that a portion of the stipulated MCF price for gas under the 1952 contract (¼ cent) was for LHC, and the decisions of state and federal authorities in this controversy that the price Arkla paid the United States for LHC is a "pertinent factor" to be used under section 8 of the 1952 contract in interpreting the favored nation clause and in determining the difference in the price provision of the two contracts. The price provisions can be and have been compared.

Again we determine that for the purpose of giving effect to the favored nation clause—section 8 of the contract, the higher price the United States began to receive from Arkla in 1961 for gas and for LHC is the basis upon which to assess and measure the amounts plaintiffs should have begun to receive monthly from Arkla in 1961 for its gas and LHC. Arkla conditionally concedes as much in its first reply brief:

> "The values paid by Arkla to the United States for extracted plant products can and must be considered under this Court's May 1, 1978, judgment [359 So.2d 255 (La. App. 2d Cir.)] as a pertinent factor to determine the overall price paid to the government on a per Mcf basis. The Court has held that it is a pertinent factor and Arkla cannot attack that holding on this appeal. However, when the Court made that decision, the effect of the application of that pertinent factor on the Plaintiffs' monetary recovery was left to the Trial Court on remand. The Trial Court has considered the issues on remand and has rendered an award in its

> May 17, 1979, judgment, that is *again* grossly in error. This time, the [trial] Court failed to consider the limitations placed upon the award by the Natural Gas Act. The Plaintiffs award should be limited [to a total of $1,609,067.11] . . ."

We cannot agree that the trial court erred.

We reiterate that the purpose of the favored nation or price adjustment clause is to protect the seller under a long-term contract from price discrimination. A contract with favored nations provisions should be interpreted broadly, and not restrictively, to fully effect the provisions. 359 So.2d at p. 262. See also *Eastern Petroleum Company v. Kerr-McGee Corporation,* 447 F.2d 569 (C.A. 7th, 1971). Arkla paid the United States for gas and for LHC. Arkla paid plaintiffs for gas and LHC. Section 8(D) of plaintiffs' contract states that ". . . in determining whether [the price paid the United States for "gas"] is in fact 'higher' than the price provisions of [plaintiffs'] contract, the inquiry shall not be limited to the actual prices stipulated [for "gas"], but *due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts such as*

> point of delivery,
>
> basis of measurement,
>
> taxes,
>
> dehydration, and
>
> delivery pressure . . .

and the price to be thereafter payable [to plaintiffs] *shall be adjusted accordingly* insofar as *may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts . . . subject to any rules and regulations of . . . any . . . regulatory body having jurisdiction."*

We have again reviewed in the original record, summaries and the testimony of the plaintiff-expert at whose direction they were prepared. We do not depart from our 1978 observation.[4] We remanded in 1978, not because we thought that this evidence was deficient or suspect or that plaintiffs' recovery should be limited by the amount that Arkla paid the United States for its *dry* gas after LHC extraction. In the 1952 contract, *gas* includes LHC and the price provisions of the contract provide a price for both.

The lower court originally used the data summaries and testimony relating to the comparison of pertinent factors for the entire period (1961-1975) to determine damages for the 1972-1975 limited period that the lower court and we thought damages were owed.[5] The lower court propor-

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[4] In our 1978 opinion we observed that the plaintiff-expert

> "... gathered all of the pertinent data necessary to calculate damages ... for the entire period ... 1961 through ... 1975. Based on the data obtained ... schedules [were prepared to reflect a comparison in the price ... paid ... plaintiffs with that ... paid to the United States ... during this fourteen-year-period ... [and] which related to the differential in the price of gas to the volumes sold by plaintiffs to defendant for the period. Built into these summaries are the adjusting factors ... considered necessary to render the prices comparable. These summaries were ... extended to calculate ... interest on the sums claimed during the period."
>
> 359 So.2d at 264.

[5] We note that the FPC-FERC agreed with the original determination by the lower court and by this court that damages were due for the limited period 1972-1975:

> * * *
>
> "Prior to 1972 the Hall group did not hold small producer certificates. In the 'Order Denying Application for Rehearing' issued June 5, 1976, the FPC stated on p. 2, n. 1.:
>
> > 'Prior to the filing of their small producer application, respondents, of course, as ARKLA contends, would be entitled under the Natural Gas Act only to the rate on

tionately reduced the damages for the 1961-1975 period ($2,800,000) by 68 percent to determine the damages for the 1972-1975 period ($900,000). We remanded because neither party had *pursued* the lower court's suggestion for expert assistance and had not provided the lower court with *means* to accurately reduce or extract the 1961-1975 data to facilitate determination of the damages for the 1972-1975 period. We were then, as we are now, satisfied that plaintiffs are entitled to have the favored nation clause

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file with this Commission and in effect. See *Samedan Oil Corp., et al.*, 37 FPC 207, and cases cited therein.

"The FPC held that the producers were not entitled to a rate increase for the period prior to when they held small producer certificates since they had not filed for a rate increase as required by Commission regulation. The Louisiana Supreme Court, however, has awarded damages back to 1961. It concluded that it was Arkla's fault that the Hall group has not filed for a rate increase prior to 1972. The Louisiana court therefore deemed that the Hall group had fullfilled its obligation to file new rate schedules. On this basis the Louisiana Supreme Court awarded damages for the 1961 to 1972 period after the favored nation clause was found to have been triggered and before the Hall group received small producer certificates.

"It is our opinion that the Louisiana Supreme Court's award of damages for the 1961-1972 period violates the filed rate doctrine. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 349 U.S. 246, 251 (1951). This Commission, however, does not have the power to review what the state court has done. We note, however, that a petition for a writ of certiorari has been filed in the Supreme Court of the United States seeking review of the Louisiana Supreme Court's decision. *Arkla* v. *Hall*, Sup. Ct. No. 78-986, filed December 18, 1978."

Arkansas Louisiana Gas Company v. Frank F. Hall, et al, Docket No. RI-76-28, Order Declining Jurisdiction After Reconsideration of the Issue on Remand, issued May 18, 1979, footnote 18. See also footnote 20.

The U.S. Supreme Court denied certiorari on October 1, 1979.

interpreted to allow them an escalation of the amounts Arkla paid plaintiffs for gas (whether wet or dry) and for any extracted LHC (originally ¼ cent per MCF) determined by the price Arkla paid the United States for its gas (albeit dry) and for the extracted LHC. The Supreme Court of Louisiana agreed and FERC so understood.

> "The Louisiana courts found that the contract provided for a price for the [LHC] products removed from the gas severable from the price for the gas sold under the contract. The damages awarded for the actual natural gas, not including the severable payment for the products removed, was within the area ceiling rate."
>
> Footnote 19, FERC, May 18, 1979, cited supra in Footnote 5.

Section 8 of the 1952 contract, pertinent parts of which have been quoted, effectively states that the price Arkla pays for each MCF of *gas* includes ¼ cent for [LHC and] other products which may be recoverable from the gas. On the *basic contract question* (to use terminology frequently used by FERC) the effect of the lower court's finding, which we again approve, is that the contract shall be interpreted to entitle these plaintiffs to damages measured by what Arkla paid the United States for its gas *and* for LHC products severed from its gas. In effect Arkla paid the government and the plaintiffs for *wet* gas. The eventual price was determined by the MCF after extraction of LHC and by the price for the LHC. The price plaintiffs received for its gas after extraction of LHC and for the LHC was less than what the government received.

The 1952 contract provides that, once the favored nation clause is activated, the increase plaintiffs shall receive shall be ". . . an amount equal to the difference between *the price provisions* [of the 1952 contract] and the . . . higher *price provisions* of [the 1961 contract with the

United States] . . ." The price provisions of plaintiffs' contract and of the United States' contract have been compared and the difference has been determined. Plaintiffs should receive for their gas and for the LHC in the gas the higher amount the United States was receiving for its gas *and* the LHC in the gas. *Gas* in the 1952 contract includes the LHC. Each contract contains price provisions for gas and for LHC. When the price provisions of the two contracts, comparing the pertinent factors, are considered, plaintiffs are entitled to the damages assessed.

Plaintiffs are not entitled to damages for frivolous appeal. At Arkla's cost, judgment is AFFIRMED.

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

Office of the Clerk, Shreveport, Louisiana. February 29, 1980

As counsel of record in the captioned case, you are hereby notified that the application or applications for rehearing filed by Defendant-Appellant have this day been refused, en banc.

Frank J. Hall, et al

versus

Arkansas Louisiana Gas Co.

Docket No. 14,012

Comments (if any were given by the Court):

Sincerely,

Harold L. Booth
Clerk of Court

cc:

Mr. James Fleet Howell
Wiener, Weiss, Madison & Howell
411 Commercial Bank Building
Shreveport, La. 71101

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SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

No. 67,225

FRANK J. HALL, ET AL

VS

ARKANSAS LOUISIANA GAS COMPANY

In Re: Arkansas Louisiana Gas Company, applying for Certiorari, or Writ of Review, to the Court of Appeal, Second Circuit, No. 14,012, Parish of Caddo.

May 2, 1980

Denied.

JCW

JAD

PFC

WFM

FAB

A TRUE COPY

Clerk's Office
Supreme Court of Louisiana
New Orleans

May 2, 1980

/s/ FRANS J. LABRANCHE, JR.
Clerk of Court

APPENDIX C

SELECTED EXHIBITS AND PLEADINGS P-1

Filed in Evidence in Suit No. 225699, September 27, 1976

THIS AGREEMENT, executed this 11th day of January, 1952, by ARKANSAS LOUISIANA GAS COMPANY as the party of the first part (hereinafter referred to as "Buyer"), and by certain parties of the second part (hereinafter collectively referred to as "Seller") whose signatures are hereunto subscribed,

WITNESSETH:

Seller desires to sell to Buyer production from certain commercially productive natural gas properties in the *Sligo Gas Field, Bossier Parish, Louisiana,* and Buyer desires to purchase said production for use in the regular conduct of Buyer's business as a gas utility, all in accordance with the terms and conditions hereafter in this contract appearing,

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the parties hereto do covenant and agree as follows:

1. *PROPERTIES SUBJECT HERETO.*

(A) Subject to all the terms and conditions of this contract, this agreement shall cover the production from all wells now or hereafter completed as commercially productive of natural gas on the lands, leases, and unitized tracts in the *Sligo Gas Field, Bossier Parish, Louisiana,* described in *Exhibit A* which is attached hereto and hereby made part hereof. As used in this agreement, except as hereinafter qualified, the term "well" shall refer to any and all drilling and production units commercially productive of natural gas and now, or at any time hereafter during the term hereof, located, either wholly or partially, on the properties described in the aforesaid *Exhibit A*; if a well

be completed in more than one formation, each producing formation shall be considered a separate well.

(B)(1) Buyer shall not be obligated to connect its gathering system with and receive gas from any well having an open flow potential productive capacity of less than two million (2,000,000) cubic feet of gas per day, but may do so, at its option.

(2) Buyer shall not be obligated to continue receiving gas hereunder from any given well or wells which will not deliver to Buyer 100,000 cubic feet of gas per day under all the terms and conditions of this contract, provided that Buyer may, at its option, continue receiving gas from such well or wells.

(3) Seller reserves the right to deliver to lessors of any of Seller's leases covering properties from which gas is delivered hereunder sufficient gas to meet the requirements of Seller's obligations as lessee to furnish gas to such lessors.

(4) Seller reserves the right to use from Seller's properties such gas as may be necessary for development of Seller's properties situated in the same field, including but not limited to the use of gas for fuel, drilling, and operating said properties for the production and delivery of oil, gas or other minerals.

(C) (1) If for any reason whatsoever less than 100% of the production from any given well or wells is covered by this agreement during all or any part of any given contract year, then Buyer's rights and obligations hereunder, including its minimum take obligations under the Section hereof pertaining to Quantities, shall be adjusted proportionately.

(2) Buyer may, at its option, refuse to connect its gathering system with and receive gas from any well now or hereafter completed in which Seller owns less than a fifty per cent (50%) interest as of the date Seller's interest in such well would otherwise be subject hereto unless enough

of the other interest owners in any such well agree that their interest in the gas production therefrom shall be delivered to Buyer as to make it economically feasible, in Buyer's opinion, to receive delivery of production from such unit. Any well in which Seller owns more than a fifty percent (50%) interest shall be subject hereto.

2. *EFFECTIVE DATE AND COMMENCEMENT OF DELIVERIES.*

(A) This agreement shall not be effective unless the owners of at least fifty-one percent (51%) of the interest in each of the wells subject hereto execute same prior to January 26, 1952.

(B) Subject to the timely execution hereof by the owners of at least fifty-one percent (51%) of the production from each of the wells subject hereto as in the preceding paragraph hereof provided, this agreement shall be effective as to all such parties seller who have thus executed this agreement prior to January 26, 1952, as of May 26, 1951; as to all parties owning an interest in the subject wells who execute this agreement as a party seller on or after January 26, 1952, this contract shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the date on which such party seller executes same.

(C) It is understood and agreed that until this agreement is effective as to a given party seller all or any part of whose interest in any of the subject property is covered by a prior agreement with Buyer, the gas attributable to said interest of such party seller shall continue to be delivered to Buyer under the terms and conditions of such prior contract. This agreement shall, as of its effective date as to a given party seller, supersede all previous agreements, and any supplements or amendments thereto, between Buyer and such party seller covering such party seller's interest in any or all of the subject properties, provided that nothing herein is intended, nor shall in any manner operate, to

cancel or supersede any prior agreement or agreements or amendment or amendments to such prior agreement or agreements covering all or any part of the subject property insofar as such prior agreement or agreements or amendments thereto cover any interest or interests in the subject property which interest or interests are not subject to the instant contract, it being understood and agreed that Buyer does not by this agreement intend to waive or renounce any rights whatsoever which Buyer may have under or by virtue of any such prior agreement or agreements and amendments thereto except insofar as such prior agreements are superseded hereby as to the particular parties seller actually executing this agreement, and Buyer hereby expressly reserves any and all such rights.

(D) Deliveries of gas from wells presently connected to Buyer's gathering system shall commence on the effective date hereof; deliveries of gas from other wells now or hereafter subject hereto shall commence upon the prompt and efficient completion and placing in operation of any facilities which must necessarily be constructed hereunder prior to such commencement of deliveries.

3. *TERM.* This contract shall continue and remain in full force and effect until June 1, 1980, and from year to year thereafter, unless or until terminated, as it may be by either party by written notice to the other party given thirty days prior to the date upon which termination is desired, it being understood and agreed that such termination date may be and may only be June 1, 1980, or any subsequent anniversary of that date.

4. *CONSTRUCTION, OPERATION, AND MAINTENANCE OF FACILITIES.*

(A) Buyer shall be responsible for the construction, operation and maintenance of such field gathering facilities as may be necessary for Buyer to receive the gas delivered hereunder into Buyer's field gathering system.

(B) Seller shall not be obligated to dehydrate the gas prior to delivery hereunder, and any dehydration necessary shall be done by Buyer, all subject, however, to the provisions of Paragraph (C) of Section 8 of this contract providing for the payment of a dehydration charge by Seller. It is agreed that dehydration is necessary if the gas delivered hereunder has a water content in excess of seven pounds of water per one million cubic feet of gas as determined by dew point test apparatus operated by Buyer in accordance with the Bureau of Mines method or such other method as the parties may agree upon.

5. *POINT OF DELIVERY AND TRANSFER OF TITLE*. Gas sold hereunder shall be delivered to Buyer, and title thereto shall pass to Buyer at the outlet side of Buyer's metering equipment located at or near each of the wells subject hereto.

6. *QUANTITIES*.

(A) The parties recognize that Buyer will also receive gas during the term of this contract from other wells in the Sligo Gas Field besides those wells which are subject to this particular contract, and that this Section sets up a system of withdrawal in terms of all wells delivering gas to Buyer from this Field. Buyer and Seller hereby agree to be bound by the provisions of this Section 6 to the extent that wells subject to this contract are affected hereby and Buyer's receipts of gas from subject wells shall be in accordance with the procedures herein set forth. It is also recognized, however, that the provisions hereinafter in this Section 6 appearing have been agreed to by Buyer on the assumption that Buyer will have the right to receive 100% of the gas production from all "Sligo wells" over the entire course of any given annual period, and to the extent that all of the production from any particular Sligo well or wells is not thus deliverable to Buyer, then it is understood and agreed that the provisions hereof shall be subject to appropriate proportionate adjustment.

(B) The following terms shall have the meanings hereinafter in this Subsection (B) accorded them when used in this Section 6:

(1) The term "Sligo well", as used in this Section 6, shall refer to a well now or hereafter completed in the Sligo Gas Field, as the same is now or may hereafter be constituted, from which Buyer received gas during a given annual period, without regard to whether such well be subject to this particular contract or not; in the case of multiple completions each producing formation shall be considered a separate well.

(2) The term "marginal well" shall refer to a Sligo well which is not physically capable of lawfully delivering to Buyer over a given annual period under all the rules and regulations of any regulatory body having jurisdiction and under the terms and conditions of the agreement by virtue of which Buyer receives gas from such well 365.-000,000 cubic feet of gas plus such quantity of "excess gas", if any, as would otherwise be receivable from such well under the provisions hereof.

(3) The term "capable well" shall refer to a Sligo well which is physically capable of lawfully delivering to Buyer during a given annual period under the rules and regulations of any regulatory body having jurisdiction and in accordance with and subject to the terms and conditions of the agreement by virtue of which Buyer receives gas from such well at least 365,000,000 cubic feet of gas plus such quantity of "excess gas", if any, as may be receivable from such well under the provisions hereof.

(4) The term "average acreage" shall mean that acreage which will result in allocating 365,000,000 cubic feet of gas to a well when the total quantity of gas received by Buyer over a given annual period from all capable wells delivering to Buyer over said annual period is allocated ratably among all such capable wells in the proportion that

the developed producing acreage attributable to a given capable well bears to the total developed producing acreage attributable to all such capable wells.

(5) The term "excess acreage" shall mean the extent that the developed producing acreage attributable to a given capable well is in excess of the average acreage.

(6) The term "excess gas" shall mean the extent by which Buyer's total receipts of gas from all capable wells during any given annual period exceeds that quantity resulting when the number of such capable wells be multiplied by 365,000,000 cubic feet of gas.

(C) (1) During any given annual period Buyer shall receive from each marginal well all the gas such well is physically capable of lawfully delivering to Buyer under the rules and regulations of any regulatory body having jurisdiction and in accordance with and subject to the terms and conditions of the agreement by virtue of which Buyer is receiving delivery of gas from such well. The parties recognize that neither the quantities of gas received from marginal wells nor the developed producing acreage attributable to marginal wells are considered in the calculations of "average acreage", "excess acreage", or "excess gas."

(2) During any given annual period Buyer shall receive from each capable well 365,000,000 cubic feet of gas (sometimes herein referred to as "minimum take") and shall have the right, but not the obligation, to receive larger volumes of gas from any such well physically capable of lawfully delivering same to Buyer hereunder.

(3) Any "excess gas" received by Buyer during any given annual period shall be prorated ratably among all capable wells delivering to Buyer over said period to which "excess acreage" is attributable in the proportion that the "excess acreage" attributable to a given capable well bears to the total "excess acreage" attributable to all such capable wells.

(4) Since the calculation of "average acreage" for any particular annual period will necessarily depend upon the quantity of gas actually received by Buyer from all capable wells during such period and accordingly it will be impossible for Buyer to receive the exact quantity of "excess gas" from each well entitled to a prorata share thereof during said annual period, it is agreed that to the extent that actual receipts of "excess gas" by Buyer from capable wells during a given annual period be greater than or less than the respective quantities which should have been received from such wells under the provisions hereof during said period, the "minimum takes" to be received from such wells during the ensuing annual period shall be correspondingly reduced or increased in order that disproportionate withdrawals of "excess gas" during the given year will be thus balanced out among all such wells by appropriate adjustments of the minimum takes applicable to the wells during the ensuing annual period.

(D) It is the intention of the parties that this Section 6 have no retroactive application prior to the execution date hereof, anything in Section 2 hereof to the contrary notwithstanding, and it is hereby stipulated that Buyer's take obligations under this or any previous contracts in respect of any interests as to which Section 2 makes this contract effective as of May 26, 1951, are completely satisfied by whatever volumes of gas Buyer actually received from said interests between May 26, 1951, and the execution date hereof.

(E) It is expressly understood and agreed, however, that Buyer shall not be obligated to receive any additional quantities of gas under this contract by reason of the completion hereafter of a new well on acreage attributable to a well which is subject hereto at the time of the completion of such new well if such new well is completed in the same producing zone as the said previously existing well; in such case the quantities of gas which Buyer is obligated to re-

ceive hereunder from the said previously existing well, may, at Buyer's option, be withdrawn from either or both the said wells and the two may, at Buyer's option, be considered for purposes of this contract as one and the same well.

(F) The parties take cognizance of the fact that Buyer's needs for gas will fluctuate over the course of a year, and Buyer shall have the right to vary its rate of take from time to time and to receive from any given well or wells as little gas as 15,000,000 cubic feet during any given accounting month, provided that Buyer balance its takes over reasonable periods of time.

7. *DELIVERY PRESSURES.*

(A) *Maximum Delivery Pressure.* Seller shall make deliveries of gas hereunder at whatever pressures may be required by Buyer from time to time up to that pressure necessary to effect deliveries hereunder against a pressure of *850* pounds per square inch gauge at the point of delivery.

(B) *Compression.* If the natural flowing pressure at which gas is produced from a given well or wells is insufficient to effect deliveries of gas hereunder from such well or wells at the pressure required by Buyer under Paragraph A of this Section 7, Seller shall have the prior right to compress the gas in order to deliver same at the required pressure. To that end Buyer shall make written request upon Seller to install and operate the necessary compression equipment whenever the need for same exists as to a given well or wells. It is provided, however, that if Seller ever refuses to operate the necessary compression equipment (and it is expressly agreed that failure to place compression facilities in operation within 180 days after receipt of any such notice of the necessity therefor from Buyer shall constitute a refusal by Seller to operate such equipment) or fails to continue the efficient operation of any such

equipment after having once commenced, then Buyer shall have the right, but not the obligation, to install and operate, or utilize its existing, compression facilities to compress any or all gas thereafter delivered under this contract without the necessity of further notice to Seller, and it is understood and agreed that Seller's right to install and operate or continue operating compression equipment after Buyer has commenced compressing any gas delivered hereunder shall thereafter be subject to Buyer's right, at Buyer's option, to compress any or all gas thereafter delivered hereunder. Buyer may discontinue compressing gas from any or all wells at any time by giving 30 days notice to Seller whereupon Seller may compress the gas from any such well or wells. If in accordance with the provisions of this paragraph, Buyer commences operation of any such compression equipment, Seller shall thereafter pay to Buyer as a compression charge $0.0075 per thousand cubic feet of gas delivered hereunder, whether such equipment is operated continuously or not; provided, however, that no compression charge shall be made either for (1) gas produced from a well or wells physically capable of delivering such gas hereunder against a pressure of 850 pounds per square inch gauge, or (2) for gas which Buyer is not equipped and prepared to compress and which Seller has compressed and delivered to Buyer at the pressure required by Buyer hereunder. If more than one stage of compression is necessary, then the aforesaid compression charge to be paid to Buyer by Seller shall be $0.015 per thousand cubic feet of gas delivered hereunder. Any compression charges due hereunder may be deducted by Buyer from remittances due Seller hereunder.

(C) Subject to the force majeure clause hereinafter set forth, if a given well is shut in for 75 consecutive days because of Buyer's failure to take delivery of gas from such well and Seller is, throughout said 75-day period, prepared to deliver gas to Buyer from such well under the terms and conditions hereof, then in such event Seller shall

have the right to terminate this contract as to gas thereafter produced from such well, this right to terminate being expressly conditioned, however, as follows:

(1) Seller shall give to Buyer written notice of its intention to so terminate this contract as to such well at least 15 days prior to the date upon which said termination is to be effective, said 15-day period being for the purpose of enabling Buyer to take such steps as may be necessary to enable it to remedy the situation and commence receiving gas from such well under this contract again; and

(2) If Buyer's failure to take delivery of gas from such well is because of the inability of such well to deliver gas at the pressures required by Buyer hereunder, then the aforesaid 75-day period shall, for purposes of this Section, not commence to run until Buyer shall have acquired the right to compress gas from such well, and it is further agreed that the running of the aforesaid 75-day period shall be suspended so long as Buyer engages in good faith efforts to obtain necessary compression equipment and facilities and proceeds with due diligence in the installation of compression facilities necessary to effect deliveries of gas hereunder from such well at the required pressures.

8. *PRICE.*

(A) (1) The price to be paid by Buyer for each one thousand cubic feet of gas delivered hereunder to Buyer, on the basis of measurement and calculations hereinafter provided, shall be as follows:

(a) \$0.06997 from the effective date hereof through May 31, 1955;

(b) \$0.07897 from June 1, 1955, through May 31, 1960;

(c) \$0.08797 from June 1, 1960, through May 31, 1965;

(d) \$0.09696 from June 1, 1965, through May 31, 1970;

(e) \$0.10596 from June 1, 1970, through May 31, 1975;

(f) \$0.11496 during the remainder of the time this agreement shall be in force and effect.

(2) It is recognized that during the existence of the Defense Production Act of 1950 and any amendments, extensions, renewals, and successors thereof the price to be paid by Buyer to Seller for gas delivered hereunder is subject to the rules and regulations of the proper Price Stabilization authorities or any successors thereof (hereinafter for convenience referred to as Office of Price Stabilization). If the above prices payable under the foregoing Paragraph (A) (1) of this Section 8 for production delivered hereunder are now, or at any time hereafter, or from time to time, in excess of a given party seller's "Ceiling Price" as properly determined under and in accordance with any such concurrently effective rules and regulations of the Office of Price Stabilization, then in lieu of the above prices the price to be paid by Buyer to such party seller for production delivered hereunder during so long a period of time as such condition exists shall be such party seller's "Ceiling Price" in effect during said period.

(B) The prices hereinabove in this Section 8 provided to be paid by Buyer to Seller shall constitute full payment for all gas delivered hereunder and also for all liquifiable hydrocarbons and other products delivered with such gas, it being understood and agreed that any and all products whatsoever recovered or recoverable from the production delivered hereunder by means of any type of processing operation subsequent to delivery shall be the property of Buyer or its assign without any obligation to make further payment to Seller for such products, it being further understood and agreed, however, that nothing herein is in-

tended to deprive Seller of the right to operate a standard type oil field separator at each well subject hereto in order to remove such condensate as may be thereby extracted prior to delivery of production hereunder to Buyer. The parties take cognizance of the fact that the aforesaid prices hereinabove provided to be paid are $0.0025 per MCF higher than would have been provided had Seller retained the right to participate in the recovery of products by such processing operations subsequent to delivery, and accordingly the aforesaid prices have been calculated and agreed to by the parties with the intention and understanding that payment of the said prices shall constitute payment for all products whatsoever recoverable from the production delivered to Buyer hereunder.

(C) If in accordance with the provisions of Paragraph (B) of Section 4 of this contract, Buyer dehydrates the gas delivered hereunder, then Seller shall pay to Buyer as a dehydration charge the sum of $0.002 for each one thousand cubic feet of gas dehydrated, which dehydration charge may be deducted by Buyer from remittances due Seller hereunder.

(D) If at any time during the term of this agreement Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Gas Field at a higher price than is provided to be paid for gas delivered under this agreement, then in such event the price to be paid for gas thereafter delivered hereunder shall be increased by an amount equal to the difference between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract; provided that in determining whether a given price is in fact "higher" than the price provisions of this contract, the inquiry shall not be limited to the actual prices stipulated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts, such as point of delivery, basis of meas-

urement, taxes, dehydration, and delivery pressures (provided that the number of years stated as the terms during which the two contracts shall respectively remain in force and effect shall not be a factor to be considered for purposes of comparison under this paragraph) and the price to be thereafter payable in accordance with this paragraph for gas delivered hereunder shall be adjusted accordingly insofar as may be necessary to make allowances for any discrepancies as may exist between such comparable provisions of the two contracts. It is agreed that any such higher price for gas delivered hereunder shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the effective date of such subsequent contract, all subject, however, to any rules and regulations of the Office of Price Stabilization or any other regulatory body having jurisdiction.

9. *CONDENSATE.* Buyer, or its assign, shall have the option from time to time and upon sixty (60) days' notice, of purchasing all of the free condensate that may be produced from the subject wells and which may be recovered or recoverable by the use of separators operated in connection with such wells, and measured by liquid meter, or liquid gas ratio tests as hereinafter set forth, and shall accept delivery of such condensate into the gas gathering lines or at Seller's option from Seller's storage tanks located on the leases. Buyer, or its said assign, shall deliver to Seller written notice of the exercise of its said option and may discontinue the purchase of condensate by giving Seller sixty (60) days' written notice that it no longer desires to purchase same.

Measurement of condensate delivered into the gathering lines shall be by suitable liquid meter installed and kept in repair by Buyer, or its assign, or by liquid-gas ratio tests, conducted quarterly, as may be agreed upon. Measurement of condensate delivered from Seller's storage tanks shall be governed by the capacities of Buyer's trucks which have

been strapped by a recognized testing concern or by public authority. It is agreed, however, that all condensate volumes shall be weathered to atmospheric pressure, or that as to the condensate delivered into the gas gathering system, shrinkage of the high pressure condensate shall be based upon a shrinkage factor to be determined semiannually, or more often, when in the opinion of either party, a change in the method of the operation of Seller's wells will materially affect such factor. The shrinkage factor shall be determined by the following method: A suitable sample of the high pressure condensate shall be bled out of the separator into a calibrated pressure bomb. Gas from this bomb shall be liberated through a suitable trap for the purpose of accumulating any entrained liquid. After the pressure on the bomb has been reduced to atmospheric pressure and temperature, the remaining liquid therein, plus any liquid accumulated in the trap, shall constitute the weathered volume at the observed temperature attributable to the sample volume. The volume of weathered condensate at the observed temperature shall then be corrected to 60° F. and the difference between this volume and the sample volume divided by the sample volume shall be the shrinkage factor. The foregoing procedure shall be followed until the parties agree on some other mutually agreeable method suitable for the purpose.

Buyer shall pay or cause to be paid to Seller, for condensate received in accordance with the provisions of this Section, the price posted by Buyer or its said assign, as the case may be. Provided, however, that such posted price shall be in line with the prices established by the majority of major oil companies for similar grade condensate in fields in North Louisiana.

10. *TAXES*. Seller shall pay or cause to be paid all existing severance, production, and other excise taxes levied on the production deliverable hereunder up to the point of delivery and Buyer shall pay all existing gathering, trans-

mission, export and sales taxes levied on the gas after its receipt by Buyer. Any increase in sales, transactions, occupation, service, production, severance, gathering, transmission, export or excise taxes, assessments or fees hereafter levied, assessed or fixed by the United States or any state or other governmental authority and taxes of a similar nature or equivalent in effect (not including income, excess profits, capital stock, franchise, or general property taxes) in addition to or greater than those being levied, assessed, or fixed on the date first above written, if any, in respect of or applicable to the gas to be sold by Seller to Buyer hereunder and for which either party may be liable during any month, either directly, or indirectly through any obligation to reimburse others, are hereafter collectively referred to as an "additional tax". It is expressly understood and agreed between the parties that in the event any such additional tax is levied for which Seller is liable hereunder, then Buyer shall, so long as such additional tax shall be in effect, pay to Seller each month an increase in price sufficient to reimburse Seller for *three-fourths* of such additional tax; and in the event any such additional tax is levied for which Buyer is liable hereunder, then Seller shall, so long as such additional tax shall be in effect, pay to Buyer each month a sum sufficient to reimburse Buyer for *one-fourth* of such additional tax. In the event all or any part of such liability of either party is not determined or determinable by the end of any month, then the accounts of the parties shall be adjusted and settled, in the statement to be rendered by Buyer to Seller by April 1 of the next following year in respect of such additional tax for the calendar year then last ended.

If such additional tax shall amount to more than three ($0.03) cents per thousand cubic feet, then either party by thirty (30) days' written notice to the other may cancel this agreement; provided, however, that in the event of such notice of cancellation the other party may continue the contract by agreeing to assume the economic burden of

that party of the additional tax in excess of such $0.03 increase. For the purpose of this Section 10 only, the basis of measurement of a cubic foot of gas for the purpose of determination of the amount of tax shall be as prescribed by the statute or statutes imposing the tax.

Buyer shall have the right, at Buyer's option, to pay for Seller's account all taxes now or hereafter due and payable by Seller in respect of production received by Buyer hereunder, and may deduct all sums thus paid from remittances to Seller hereunder.

11. *ROYALTY SETTLEMENTS.* Seller shall pay all royalty payments and other production payments, as provided in its leases and assignments thereof, for all production delivered hereunder. Seller agrees to hold Buyer harmless against any and all claims, losses, and damages resulting from payment to Seller for any production delivered hereunder. It is agreed and understood, however, that should Seller so request, Buyer will pay for Seller's account all royalty payments and other production payments as provided in the leases covering the subject properties, such payments to be deducted from remittances to Seller hereunder. It is further understood, however, that Seller shall, when requested by Buyer, furnish Buyer signed division orders upon regular forms of Buyer, directing the payment to the proper parties of such amounts as may be due for royalties and other production payments and shall furnish Buyer transfer orders from time to time, as required, upon the regular forms of Buyer.

12. *ADDRESSES OF PARTIES.* Notices and payments hereunder may be given or mailed to each party seller at the address set forth by the signature of such party.

Notices and payments hereunder may be given or mailed to Buyer at the following address:

Arkansas Louisiana Gas Company
Slattery Building
Shreveport, Louisiana.

Either party may by written notice to the other provide for a changed address to which payments and notices shall thereafter be given or mailed.

13. *GENERAL TERMS AND CONDITIONS.* Reference is hereby made for all purposes to additional terms and conditions of this gas purchase contract, which are attached as a supplement hereto, identified herewith, and hereby made part hereof.

14. This agreement has been prepared in multiple counterparts to facilitate its execution by all parties seller owning interests in the subject properties, and it is agreed that all such counterparts, each executed by one or more of the parties seller, shall constitute but one and the same contract to the same extent as though all such parties seller had joined in the execution of the same document.

In Witness Whereof this instrument is executed by Buyer as of the day and year first above set forth and executed by the parties seller as of the dates set forth below by their respective signatures.

Arkansas Louisiana Gas Company

By /s/ A. H. Weyland
President

Witness:

/s/ Helen M. Weigand
/s/ Carey R. Meredith

Attest: /s/ T. J. Heard
Secretary

Seller

/s/ D. B. McDonnell
Execution Date: Jan. 4th, 1952
Address: 293 Leo Ave.
Shreveport, La.

Witness:

/s/ Mrs. W. D. Smith
/s/ Hugh M. Stephens

/s/ Palmer R. Long
Execution Date: 1 - 4 - 52
Address: 227 Carrollton
Shreveport, La.

Witness:

/s/ Mrs. W. D. Smith
/s/ Hugh M. Stephens

/s/ Harry L. Viser, Jr.
Execution Date: Jan. 4, 1952
Address: 6712 Querbes Dr.
Shreveport, La.

Witness:

/s/ Mrs. W. D. Smith
/s/ Hugh M. Stephens

M[illegible] Trust
/s/ [illegible]ry L. Viser, Jr., Trustee
Execution Date: Jan. 4, 1952
Address: 2634 Lydia St.
Baton Rouge, La.

Witness:

/s/ Mrs. W. D. Smith
/s/ Hugh M. Stephens

R. M. L. Trust by
/s/ Palmer R. Long, Trustee
Execution Date: 1 - 4 - 52
Address: 104 Fairfield Bldg.
Shreveport, La.

Witness:

/s/ Mrs. W. D. Smith
/s/ Hugh M. Stephens

/s/ Earle J. Christenberry
Execution Date: Jan. 5, 1952
Address: 822 Perdido Street
New Orleans 12, La.

Witness:

/s/ Mrs. W. D. Smith
/s/ Hugh M. Stephens

/s/ SEYMOUR WEISS
Execution Date: Jan. 5th, 52
Address: Roosevelt Hotel
New Orleans, La.

WITNESS:

/s/ MRS. W. D. SMITH
/s/ HUGH M. STEPHENS
/s/ JIM O. LOGAN

/s/ JAMES A. NOE
Execution Date: Jan. 6th, 1952
Address: Radio Station KNOE
Monroe, Louisiana

WITNESS:

/s/ LILLIAN B. JEFFERSON
/s/ HUGH M. STEPHENS

/s/ J. R. BOZEMAN
Execution Date: Jan. 25, 1952
Address: 1903 W. Tenn.
Midland, Texas

WITNESS:

/s/ CLOVIS G. CHAPPELL, JR.
/s/ ? ? ? ? FREZZE

/s/ W. E. HALL, JR.
Execution Date: Jan. 25, 1952
Address: P.O. Box 151
DeRidder, Louisiana

WITNESS:

/s/ W. F. WEBER
/s/ LOU ELLA MARTIN

State of Louisiana,
Parish of Caddo

Before Me, the undersigned authority, this day personally came and appeared Hugh M. Stephens, to me personally known to be the identical person whose name is subscribed as an attesting witness to the above and foregoing instrument, and upon being duly sworn, did depose and say:

That he subscribed his name to said instrument, and that he knows D. B. McConnell, Palmer R. Long, Harry L. Viser, Jr., who signed individually and as Trustee of the M & T Trust, Palmer R. Long, Trustee of the R. M. L. Trust, Earle J. Christenberry, Seymour Weiss, and James A. Noe, and saw them sign the same of their own free will, for the purposes and considerations therein expressed.

/s/ Hugh M. Stephens

Sworn to and Subscribed before me this 7th day of January, 1952.

/s/ William L. Murdock
Notary Public

STATE OF TEXAS,
COUNTY OF MIDLAND

On this 25th day of January, 1952, before me personally appeared J. R. Bozeman, to be known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed it as his free act and deed.

/s/ JENNIE ANN KYLE
Notary Public in and for
Midland County
State of Texas

State of Louisiana,
Parish of Beauregard

On this 25th day of January, 1952, before me personally appeared W. E. Hall, Jr., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed it as his free act and deed.

/s/ Allen R. LeCompte
Notary Public in and for
Beauregard Parish
State of Louisiana

CORPORATION ACKNOWLEDGEMENT

STATE OF LOUISIANA,
PARISH OF CADDO

On this 11th day of January, 1952, before me appeared A. H. WEYLAND, to me personally known, who, being by me duly sworn, did say that he is President of Arkansas Louisiana Gas Co., and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said A. H. WEYLAND acknowledged said instrument to be the free act and deed of said corporation.

/s/ H. M. LEWIS, JR.
Notary Public in and for
Caddo Parish
State of Louisiana

GAS PURCHASE CONTRACT

General Terms and Conditions

SUPPLEMENT

LOUISIANA

The terms and conditions in this supplement constitute part of the foregoing gas purchase agreement dated January 11, 1952, covering properties in the State of Louisiana in Sligo Field, Bossier Parish executed by and between Arkansas Louisiana Gas Company as the party Buyer and the following parties, if more than one, collectively referred to as Seller:

D. B. McConnell, et al

I. *BASIS OF MEASUREMENT*. Gas sold and delivered under this agreement shall be measured, calculated, purchased, and accounted for, as between the parties hereto, on the basis of a standard cubic foot of gas, at a pressure of 15.025 pounds per square inch absolute and at a temperature of 60° F., all as defined in and as determined under the Louisiana Standard Gas Measurement Law of 1950 and the rules and regulations promulgated pursuant thereto by the Louisiana state regulatory body having jurisdiction. The unit of measurement for gas hereunder shall be one thousand (1,000) standard cubic feet of gas, sometimes herein referred to as MCF.

II. *MECHANICS OF MEASUREMENT.*

(A) *The specific gravity* of gas delivered hereunder shall be periodically determined by Buyer, as often as is found necessary in practice, by a method of test generally acceptable to the industry, provided that such tests shall be preceded by reasonable notice to Seller in order that Seller may have a representative present.

(B) *The temperature* of gas delivered hereunder shall, at Buyer's option (but always subject to requirements of law), be:

(a) determined by means of a recording or indicating thermometer of a standard manufacture generally acceptable to the industry, and so installed by Buyer that it may properly record the temperature of the gas flowing through the meter or meters; or

(b) assumed to be the temperature which any regulatory body with jurisdiction announces as being the average temperature of gas produced from the well or wells subject hereto; or

(c) assumed to be 60° Fahrenheit.

(C) *The pressure and volume* of gas delivered hereunder shall be determined by standard type orifice metering equipment with flange connections installed and operated by Buyer at the point or points of delivery hereunder in accordance with the specifications prescribed in Gas Measurement Report No. 2, dated May 6, 1935, of the Natural Gas Department of the American Gas Association, as the same may be amended from time to time, or by any other method agreed upon between the parties hereto; and it is hereby agreed that the values of the Reynolds number factor and the expansion factor shall be assumed to be one (1). Seller shall have access to the metering equipment at all reasonable times, but calibrations and adjustments thereof and changing of charts shall be done by the employees or agents of Buyer. Buyer shall change the charts daily, or as often as is found necessary in practice, and shall keep said meters accurate and in repair. The meters shall be tested and calibrated periodically by Buyer, as often as is found necessary in practice, provided that such tests shall be preceded by reasonable notice to Seller, in order that Seller may have a representative present. Seller may challenge the accuracy of any meter, and if, after testing, such meter is found by Buyer to be inaccurate to

the extent of two (2%) per cent, plus or minus, Buyer shall repair the meter and make the necessary volume corrections, based on the extent of the inaccuracy, for the time during which the meter has been inaccurate, provided that in no event shall corrections extend back beyond the close of the preceding accounting month. If the meter, when challenged, is found to accurate within two (2%) per cent, plus or minus, then the cost of the test shall be borne by Seller. If, for any reason, any meter shall be out of service or out of repair so that the amount of gas delivered cannot be ascertained or computed from the reading thereof, then the gas delivered during the period the meter is out of service or out of repair shall be estimated and agreed upon by the parties upon the basis of the best data available, using the first of the following methods which is feasible: (a) By correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; (b) By using the registration of any check meter installed and accurately registering; (c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately. The charts and records from the metering equipment shall remain the property of Buyer, and shall be kept on file by Buyer for a period of at least one year, after which time they may, at Buyer's option, be destroyed. Upon request of Seller, Buyer shall submit the said charts and records from the metering equipment to Seller, together with calculations therefrom, for Seller's inspection and verification, subject to return within twenty (20) days from receipt thereof. Seller, at Seller's option and at Seller's cost and expense, may install and operate check metering equipment of substantially similar type to that operated by Buyer hereunder to check Buyer's measurements of gas delivered hereunder.

III. *QUALITY OF PRODUCTS*. The natural gas delivered hereunder shall contain not more than thirty grains of sulphur per hundred cubic feet of gas and not more than

one (1) grain of hydrogen sulphide per hundred cubic feet of gas, and shall be free of objectionable liquids and solids, oxygen, and other deleterious substances. The gas shall have an average B.T.U. content of at least 950 B.T.U. per cubic foot. Buyer shall be under no obligation to accept delivery of any gas hereunder which either does not conform to the standards of quality and heat content herein set forth or contains corrosive products in quantities sufficient to impair the useful life of Buyer's pipeline facilities or of any gasoline or other processing plant processing the gas delivered.

IV. *OPERATION OF WELLS.* Seller, at Seller's expense, shall:

(A) Complete, control, manage, operate, and maintain the wells subject hereto in a workmanlike manner;

(B) Install, operate, and maintain on each well such separators, heaters, and other equipment as may be necessary to deliver gas under the terms and conditions of this contract;

(C) Equip, operate, and regulate the pressures on, each of the wells subject hereto in such manner that the pressure and volume of the gas delivered hereunder can be regulated in a safe and satisfactory manner;

(D) Regulate the volume of gas deliveries hereunder in accordance with the instructions of Buyer's gas dispatcher or representative in the area;

(E) Conduct with Buyer's cooperation, or at Buyer's option, cooperate with Buyer who shall conduct, such well tests as Buyer may require from time to time, but not oftener than once each six months, to determine the open flow and rock pressure of the wells subject hereto, provided that in no event shall any liability attach to Buyer in connection with the making of any such tests except through the negligence of Buyer's agents.

(F) Keep as many attendants stationed in the area covered by this contract as may be necessary in order that the obligations assumed by Seller hereunder may be efficiently performed at all times.

V. *EASEMENTS AND SERVITUDES.* Buyer, or its assign, shall, insofar as Seller is able to convey such rights, have an easement and servitude on the premises covered hereby for installing, operating, and maintaining pipelines and equipment, and for any other purpose connected with the performance of this contract, with the right to remove such lines and equipment before or within a reasonable time after the expiration of this contract. For any purpose connected with this agreement Buyer's representative shall have free access to any part of Seller's leases.

VI. *WARRANTY OF TITLE.* Seller hereby warrants title to the gas and any other products delivered hereunder (all being herein referred to as "production") and the right of Seller to sell the same and agrees to defend title as against all persons whomsoever. Seller further warrants that all such production is free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes, and any other taxes. Seller shall always bear the economic burdens arising from all royalties due and payments to the mineral and royalty owners under Seller's leases and other documents as may appear of record or otherwise be binding upon Seller in accordance with the terms of the respective leases, as well as settlements with all other persons having an interest in the production sold hereunder, and Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any or all persons to or against said production. In the event any adverse claim of any character whatsoever is asserted in respect to any of said production, Buyer may retain an amount, as security for the performance of Seller's obligations with re-

spect to such claim under this contract, out of monies then or thereafter payable to Seller hereunder, up to the amount of such claim, without interest, until such claim has been finally determined or until Seller shall have furnished bond to Buyer in an amount and with sureties satisfactory to Buyer and conditioned for the protection of Buyer with respect to such claim.

VII. *PAYMENTS.* Buyer's accounting month is from 7:00 A.M. the 26th day of one calendar month to 7:00 A.M. the 26th day of the following calendar month. Payments for production (said term including gas and any other products sold hereunder) sold and delivered hereunder shall be made by Buyer not later than the 20th day of each calendar month for production delivered during the preceding accounting month. At the time of the payment a statement of the full details of the accounts as to each delivery point hereunder shall be transmitted to Seller accompanying Buyer's check in payment therefor.

VIII. *GOVERNMENT REGULATIONS.* This agreement is and shall be subject in all things to all relevant present and future state and federal laws, and all rules, regulations, and orders of any regulatory authority having jurisdiction in the premises. Neither party shall be held in default for failure to perform hereunder if such failure is due to compliance with such laws, rules, regulations, or orders.

IX. *FORCE MAJEURE.* In the event either party hereto is rendered unable wholly or in part by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that, on such party's giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so

caused, but for no longer period, and such cause shall, as far as possible, be remedied with all reasonable dispatch. The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides , lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of gas wells, any act or omission on the part of any purchaser or purchasers of gas from Buyer by reason of force majeure affecting such purchaser or purchasers, and any other causes, whether of the kind herein enumerated or otherwise, which are not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to overcome, provided that the exercise of due diligence shall never require the settlement of labor disputes against the better judgment of the party having the dispute.

X. *TERMINATION PROCEDURE ON DEFAULT.* If either party shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this contract (except where such failure shall be excused under the provisions hereof), the other party may, at its option, terminate this contract by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default, stating specifically the cause for terminating this contract and declaring it to be the intention of the party giving the notice to terminate the same; thereupon the party in default shall have thirty (30) days after the service of the notice in which to remedy or remove the cause or causes stated in the notice for terminating the contract, and, if within said period of thirty (30) days, the party in default does so remedy and remove said cause or causes and fully indemnify the party not in default for

any and all consequences of such breach, then such notice shall be withdrawn and this agreement shall continue in full force and effect. In case the party in default does not so remedy and remove the cause or causes and does not indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then this agreement shall become null and void from and after the expiration of said period. Any cancellation of this agreement pursuant to the provisions of this Section shall be without prejudice to the right of the party not in default to collect any amounts then due it and without waiver of any other remedy to which the party not in default may be entitled for violation of this contract.

XI. *SUCCESSORS AND ASSIGNS.* Benefits and obligations of this agreement shall extend to and be binding upon the successors and assigns of the parties, and shall constitute covenants running with Seller's lands and leases subject hereto. It is provided, however, that no conveyance of any interest in the properties subject hereto shall be binding upon Buyer until Buyer shall have been furnished with written notice thereof and a certified copy of records showing such conveyance.

XII. *FAIR LABOR STANDARDS ACT.* Seller hereby warrants that production sold and delivered and to be sold and delivered hereunder has been and will be produced and handled in compliance with the requirements of the Fair Labor Standards Act of 1938, and any amendments thereto, and all other Federal, State, and Municipal laws, rules, and regulations.

Exhibit "A" to the Foregoing Gas Purchase Contract Executed by Arkansas Louisiana Gas Company as the Party Buyer on the ____ Day of ____________, 1952, Covering Production From the Sligo Gas Field, Bossier Parish, Louisiana.

Sellers are the owners of oil, gas, and mineral leases covering lands in the Sligo Gas Field in Bossier Parish, Louisiana, described as:

1. NE/4 and E/2 of E/2 of NW/4, Sec. 17, T 17 N, R 11 W—with the producing gas well thereon known as Independent Oil and Gas Company's Pettit #1 Well.

2. NW/4 of SW/4, and E/2 of NW/4, Sec. 5, T 17 N, R 11 W—with the producing gas well thereon known as Independent Oil and Gas Company's Edwards #1 Well.

3. N/2 of NE/4 of NE/4, and NW/4 of NE/4, Sec. 20, T 17 N, R 11 W, less five acres in NE corner of NE/4—with the producing gas well thereon known as Independent Oil and Gas Company's Porter #1 Well.

4. SE/4 of Sec. 20, T 17 N, R 11 W—with the producing gas well thereon known as Independent Oil and Gas Company's Thompson Unit #1 Well.

5. E/2 of NE/4, Sec. 6, and W/2 of NW/4 Sec. 5, T 17 N, R 11 W—with the producing gas well thereon known as Rose McConnell Long, et al, Edwards Unit #1 Well.

6. S/2 of NE/4 of NE/4, and SE/4 of NE/4, and SW/4 of NE/4, Sec. 20, T 17 N, R 11 W—with the producing gas well thereon known as J.R. Bozeman, Trustee, McDade, et al, #1 Well.

7. S/2 of SW/4, Sec. 32, T 18 N, R 11 W—with the producing gas well thereon known as D. B. McConnell's J. L. Chandler #1 Well.

8. E/2 of SW/4 and SW/4 of SW/4, Sec. 5, and SE/4 of NW/4, Sec. 8, T 17 N, R 11 W—with the producing gas well thereon known as D. B. McConnell's S. L. Herold Unit #1 Well.

9. N/2 of SW/4, SE/4 of NW/4, and SW/4 of NE/4, Sec. 32, T 18 N, R 11 W—with the producing gas well thereon known as D. B. McConnell's Continental-Securities Unit #1 Well.

For the purpose of determining developed and productive acreage it is agreed that the Edwards Estate Lease shall be given 98 acres in the Jeter Zone, and 67 acres in the Pettit Zone. Continental-Securities Lease to be given 135 acres in the Jeter Zone.

[Map deleted from Joint Appendix]

P-45

Filed in Evidence in Suit No. 225699, September 27, 1976

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial BLM-A 054491 (Louisiana)

Protective Lease of Oil and Gas Lands Under Authority of Section 441, Revised Statutes (5 U.S.C. 405)

THIS INDENTURE OF LEASE, entered into, in triplicate, and to take effect as of February 1, 1961 by and between the UNITED STATES OF AMERICA, through the Secretary of the Interior, hereinafter called the lessor, and Union Producing Company

P. O. Box 1407
Shreveport, Louisiana

party of the second part, hereinafter called the lessee, under the supervisory authority of said Secretary and subject to the provisions of Public Land Order Nos. 701 and 2178.

WITNESSETH:

SECTION 1. *Rights of Lessee.*—That the lessor, in consideration of rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits owned by the lessor except helium gas in or under the following-described tracts of land situated in the Barksdale Air Force Base East Reservation, Bossier Parish, Louisiana:

Parcel No. 3

T. 17 N., R. 12 W., Louisiana Meridian
Sec. 1, All
Sec. 2, All
Sec. 3, All
Sec. 4, All

containing 2419.30 acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures under the conditions herein specified, as may be necessary to the full enjoyment thereof, for a period of 5 years and so long thereafter as oil or gas is produced in paying quantities; Provided, that this lease shall not be deemed to expire by reasons of suspension of prospecting, drilling, or production pursuant to any order or consent of the Secretary of the Interior.

Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bonds.*—To furnish and maintain at all times as required by the lessor a bond in the penal sum of $10,000.00 with approved corporate surety, or with deposit of United States bonds as surety therefor, conditioned upon compliance with the terms of this lease.

(b) *Drilling agreement or unit plan.*—Within 30 days of demand to subscribe to and operate under such reasonable communitization or drilling agreement, or under such reasonable cooperative or unit plan, embracing all or a portion of the lands included herein as the Secretary of the Interior may determine to be practicable and necessary or advisable, which agreement or plan shall adequately protect the rights of all parties in interest, including the United States, and which shall modify the terms hereof to the extent provided in such agreement or plan.

(c) *Wells.*—See Insert A.

(d) *Rentals and royalties.*—See Insert B.

(4) At the option of the lessor to pay the respective royalties herein provided for in value or in amount of production. If paid in value such royalties shall be due and payable monthly on the last day of the calendar month next following the calendar month in which produced. If paid in

amount of production the respective royalty products shall be delivered in merchantable condition on the premises where produced without cost to lessor, unless otherwise agreed to by the parties hereto, at such times and at such shipping point as may be designated by the lessor, or in the case of crude oil, in such tanks provided by the lessee as reasonably as may be required by the lessor, but in no event shall the lessee be required to hold royalty oil or other royalty products in storage beyond the last day of the calendar month next following the calendar month in which produced. The lessee shall not be responsible or held liable for the loss or destruction of royalty oil or other products in storage from causes over which it has no control.

(5) It is expressly agreed that the Secretary of the Interior may establish reasonable minimum values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other products obtained from gas; due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters and, whenever, appropriate, after notice and opportunity to be heard.

(6) Royalties shall be subject to reduction on the entire leasehold or on any portion thereof segregated for royalty purposes if the Secretary of the Interior finds that the lease cannot be successfully operated upon the royalties fixed herein, or that such action will encourage the greatest ultimate recovery of oil or gas or promote conservation.

(e) *Contracts for disposal of products.*—To file with the Oil and Gas Supervisor of the Geological Survey not later than 30 days after the effective date thereof, any contract, or evidence of other arrangement, for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land; provided, that nothing in any such contract or other arrangement shall be construed as modifying any of the

provisions of this lease, including, but not limited to provisions relating to gas waste, the Government's option to purchase gas; taking royalty in kind, and the method of computing royalties due as based on a minimum valuation, and in accordance with the operating regulations.

(f) *Statements, plats, and reports.*—At such times and in such form as the lessor may prescribe, to furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amounts used for production purposes or unavoidably lost; a plat showing development work and improvements on the leased lands and a report with respect to stockholders, investment, depreciation, and costs.

(g) *Well records.*—To keep a daily drilling record, a log, and complete information on all well surveys and tests in form acceptable to or prescribed by the lessor of all wells drilled on the leased lands, and an acceptable record of all subsurface investigations affecting said lands, and to furnish them, or copies thereof to the lessor when required.

(h) *Inspection.*—To keep open at all reasonable times for the inspection of any duly authorized officer of the Department, the leased premises and all wells, improvements, machinery, and fixtures thereon and all books, accounts, maps, and records relative to operations and surveys or investigations on the leased lands or under the lease.

(i) *Payments.*—Unless otherwise directed by the Secretary of the Interior, to make rental, royalty, or other payments to the lessor, to the order of the United States Geological Survey, such payments to be tendered as directed by the Oil and Gas Supervisor of the Geological Survey.

(j) *Diligence—Prevention of waste—Health and safety of workmen.*—To exercise reasonable diligence in drilling

and producing the wells herein provided for unless consent to suspend operations temporarily is granted by the lessor; to carry on all operations in accordance with approved methods and practice as provided in the operating regulations, having due regard for the prevention of waste of oil or gas or damage to deposits or formations containing oil, gas, or water or to coal measures or other mineral deposits, for conservation of gas energy, for the preservation and conservation of the property for future productive operations, and for the health and safety of workmen and employees; to plug properly and effectively all wells before abandoning the same; to carry out at expense of the lessee all reasonable orders of the lessor relative to the matters in this paragraph, and that on failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost; Provided, that the lessee shall not be held responsible for delays or casualties occasioned by causes beyond lessee's control.

(k) *Taxes and wages—Freedom of purchase.*—To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

(l) *Nondiscrimination.*—In connection with the performance of work under this lease, the lessee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The lessee

agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The lessee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(m) *Assignment of oil and gas lease or interest therein.*—To file with the lessor within 90 days from the date of final execution any instrument of transfer made of this lease, or any interest therein, such instrument to take effect upon its final approval by the Bureau of Land Management, as of the first day of the lease month following the date of filing. Upon an assignment of all or part of the record title to a portion of the acreage in this lease, the terms hereof shall apply separately to the segregated tracts.

(n) *Pipe lines to purchase or convey at reasonable rates and without discrimination.*—If owner, or operator, or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil or gas derived from lands under this lease, to accept and convey and, if a purchaser of such products, to purchase at reasonable rates and without discrimination the oil or gas of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing or selling oil, gas, natural gasoline, or other products obtained under a lease or permit granted by the United States.

(o) *Reserved deposits.*—To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas.

(p) *Overriding royalties.*—To limit the obligation to pay overriding royalties or payments out of production in excess of 5 percent to periods during which the average production per well per day is more than 15 barrels on an entire leasehold or any part of the area thereof or any zone segregated for the computation of royalties.

(q) *Deliver premises in cases of forfeiture.*—To deliver up the premises leased, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease; but this shall not be construed to prevent the removal, alteration, or renewal of equipment and improvements in the ordinary course of operations.

(r) *Use and Protection of Property.*—See Insert C.

(s) *Damage to property.*—To pay the lessor or his tenant, as the case may be, for any and all damage to or destruction of property caused by lessee's operations hereunder; to save and hold the lessor harmless from all damage or claims for damage to persons or property resulting from the lessee's operations under this lease.

(t) *Restoration of surface of land.*—Upon any partial or total relinquishment, cancellation or expiration of lease, lessee shall, as to that part of the leased land as to which his rights have terminated, and to the extent deemed necessary by the lessor fill all sump holes, ditches and other excavations, remove or cover all debris, and shall, so far as reasonably possible, restore the surface of the leased land to its former condition.

(u) *Local agent.*—To appoint and maintain at all times during the term of this lease an agent upon whom may be served written orders or notices respecting matters contained in this section, and within 15 days after the date of this lease to inform the Oil and Gas Supervisor, in writing, the name and address of such agent. If a substitute agent is appointed, lessee shall immediately so inform the said official.

(v) *Water wells.*—In case the lessee strikes water while drilling instead of oil or gas or abandons a well drilled as a water well, the right to purchase the casing in any such well at the reasonable salvage value thereof is expressly reserved by the United States.

(w) *Oil and gas Operating Regulations.*—To comply with and operate in accordance with the provisions of the Oil and Gas Operating Regulations (30 CFR, Part 221), to the extent that such regulations are not inconsistent with the specific terms hereof.

SEC. 3. The lessor expressly reserves:

(a) *Rights reserved—Easements and rights-of-way.*—The right to permit for joint or several use easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same and other Government lands and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.*—The right to lease, sell, or otherwise dispose of the surface of any of the lands embraced within this lease which are owned by the United States under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein.

(c) *Monopoly and fair prices.*—Full power and authority to promulgate and enforce all orders necessary to insure the sale of the production of the leased lands to the United States and to the public at reasonable prices, to protect the interests of the United States, to prevent monopoly, and to safeguard the public welfare.

(d) *Helium.*—The ownership and the right to extract helium from all gas produced under this lease, subject to such rules and regulations as shall be prescribed by the

Secretary of the Interior. In case the lessor elects to take the helium the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor at any point on the leased premises in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof. The lessee shall not suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which he is not reasonably compensated, save for the value of the helium extracted. The lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

SEC. 4. *Drilling and producing restrictions.*—It is covenanted and agreed that the rate of prospecting and developing and the quantity and rate of production from the lands covered by this lease shall be subject to control in the public interest by the Secretary of the Interior, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, and regulations issued thereunder, or lawful agreements among operators regulating either drilling or production, or both. After unitization, the Secretary of the Interior, or any person, committee, or State or Federal officer or agency so authorized in the unit plan, may alter or modify from time to time, the rate of prospecting and development and the quantity and rate of production from the lands covered by this lease.

SEC. 5. *Surrender and termination of lease.*—The lessee may surrender this lease or any legal subdivision thereof by filing with the proper land office of the Bureau of Land Management a written relinquishment, in triplicate, which shall be effective as of the date of filing subject to the

continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease, to be accompanied by a statement that all wages and moneys due and payable to the workmen employed on the land relinquished have been paid.

Sec. 6. *Purchase of materials, etc., on termination of lease.*—Upon the expiration of this lease, or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within 3 months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such selection all equipment shall remain in normal position. If the lessor, or another lessee, shall not within 3 months elect to purchase all or any part of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within a period of 90 days thereafter to remove from the premises all the material, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells. Any materials, tools, machinery, appliances, structures, and equipment, including casing in or out of wells on the leased lands, shall become the property of the lessor, on expiration of the period of 90 days above referred to or such extension thereof as may be granted on account of adverse climatic conditions throughout said period.

SEC. 7. *Preference of Government to purchase gas.*—Any executive department of the Government shall have the option to purchase at the market price on the date of sale up to 50 percent, or such greater percentage as may be agreed upon, of the gas produced and saved from the leased premises after 6 months advance notice to the lessee by the Secretary of the Interior; provided, such gas is not being utilized for repressuring or secondary recovery purposes for the benefit of this lease.

SEC. 8. *Heirs and successors in interest.*—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

SEC. 9. *Unlawful interest.*—It is also further agreed that no Member of or Delegate to, Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of Section 3741 of the Revised Statutes of the United States, and Sections 431, 432, and 433, Title 18, United States Code, relating to contracts, enter into and form a part of this lease as the same may be applicable.

IN WITNESS WHEREOF:

THE UNITED STATES OF AMERICA

/s/ By: ILLEGIBLE
Director, Bureau of Land Management
Date January 23, 1961

LESSEE:

UNION PRODUCING COMPANY
/s/ By: ILLEGIBLE
Executive Vice President

ATTEST:

/s/ By: ILLEGIBLE
Secretary

Witnesses:

/s/ ILLEGIBLE

/s/ ILLEGIBLE

[Map deleted from Joint Appendix]

INSERT A

(c) *Wells.*

1. On the parcel, or on each of the parcels (as described in the notice of sale hereof) embraced by this lease if there be more than one parcel, to commence the drilling of a well within 60 days from the effective date hereof and to commence the drilling of a second well within 120 days from the effective date hereof, one of which wells shall be drilled to production or abandonment at a depth sufficient to test the Cotton Valley "D" sand.

2. Within thirty days after completion of the first of either of the wells required under subsection 1 hereof, to proceed with the drilling of additional wells until the leased lands have been adequately protected from drainage caused by production of oil or gas from wells on other lands producing from the Cotton Valley "D", Travis Peak, Pettit, Anhydrite, and Jeter or other zones unless it can be shown to the satisfaction of the Director of the Geological Survey that the drilling of any such well would not be economically warranted. Drilling of each well under this subsection shall be commenced within 30 days after completion of each preceding well.

3. Within six months of the effective date hereof, and provided this lease embraces parcel 4 as described in the notice of sale hereof, to commence the drilling of a well to offset the producing oil wells situated on lands adjoining the south boundary of the parcel and if it obtains production in paying quantities, to drill such additional wells as reasonably may be required by the Oil and Gas Supervisor to insure adequate development of the oil deposits within said parcel.

4. At the election of the lessee, to drill and produce other wells in conformity with any system of well spacing or production allotments affecting the field or area in which the leased lands are situated, which is authorized and sanctioned by applicable law or by the Secretary of the Interior.

5. The Oil and Gas Supervisor of the Geological Survey may grant an extension of time, not to exceed 60 days, to commence the drilling of any of the wells provided for in subsections 1 and 2 hereof when conditions beyond the control of the operator preclude timely commencement, or for other valid reasons.

INSERT B

(d) *Rentals and Royalties.*

1. To pay the lessor annually in advance, effective the first day of the month in which the lease issues, as and for rental, the sum of one dollar per acre or fraction thereof per year on all of the acreage covered by this lease at the beginning of any rental period, such annual payments to be made only for those lease years commencing prior to a discovery of oil or gas in paying quantities on the leased land.

2. To pay the lessor a royalty of 16 2/3 per cent of the amount or value of production obtained and saved from the leased land. Also, to pay an additional royalty of 8 1/3 per cent of the value of production until there has been paid as such additional royalty an amount equivalent to $500 an acre for the total number of acres contained in this lease at time of issuance, such number being that cited in Section 1 hereof. In computing such royalty on gasoline or other products extracted from gas or on gas remaining after extraction of such products, no allowance will be made for the cost of gathering, boosting, transportation, extraction, or processing.

3. To pay the lessor, in lieu of rental at the expiration of each lease year beginning after a discovery of oil or gas on the leased lands, a minimum royalty of one dollar per acre or fraction thereof, or if there is production, the amount, if any, that such minimum royalty exceeds royalties on production.

INSERT C

(r) *Use and Protection of Property.*

1. Location of each proposed well or well road, storage area, pipeline, or other installation, will be subject to Base Commander's approval prior to commencement of drilling operations or construction.

2. Lessee will maintain all existing roads utilized by his operations at no cost to the Government. Such roads will be kept serviceable and in good condition at all times.

3. Maximum height of derricks will be limited to 150 feet above the surface of the ground.

4. When required by the Base Commander, all completed well areas, storage areas and allied facilities will be enclosed with a minimum 36-inch wire-mesh fence utilizing steel posts. Fence around well area, and area itself, will be kept neat and well maintained. Area to be fenced will be kept at a minimum required to safeguard the installation and will not exceed a 100-foot radius from edge of well or construction.

5. Portable reserve and drilling mud tanks will be provided when required by the Base Commander.

6. Drilling will not be permitted in lakes, streams, or ponds, and no waste oil, salt water, or other contamination will be permitted to drain into lakes and streams.

7. Destruction and disturbance of plant and wildlife will be kept to a minimum.

8. In no case will drilling operations be permitted in the area delineated on Exhibit "A" for the Com-

bat Operations Center until location of this facility is firmly established.

9. Drilling operations will not be permitted nearer than 1,000 feet to structures and operational facilities and 2,500 feet from housing areas and antenna farms. This distance may be increased or decreased if deemed advisable by the Base Commander.

10. All operations must be conducted in regard to good land management; market value will be paid for timber cut or destroyed; the Barksdale Air Force Base Commander will determine if lessee is to pay market value for damaged timber, or if the lessee is to cut and stack the timber for retention as Government property.

11. The lessee will abide by all Barksdale Air Force Base security regulations and requirements.

12. Maintenance and repairs to Government fences adjoining the leased area will be a responsibility of lessee and shall be kept in a serviceable condition at all times at no cost to the Government.

13. The lessee shall provide and maintain appropriate fire lanes next to existing and proposed Government-owned fences.

14. Multiple completions shall be utilized, where feasible, to minimize the number of wells required for adequate development. When required, derricks will be removed upon completion of the well.

15. Lessee must pay the Government or his tenant for all damages to or destruction of property caused by lessee's operations; to hold the Government harmless from all damage or claims for

damage to persons or property resulting from the lessee's operations.

16. Housing will not be established without showing necessity and then only with specific approval by the Base Commander.

P-58

Filed in Evidence in Suit No. 225699, September 27, 1976

ARKANSAS LOUISIANA GAS COMPANY

INTERNAL CORRESPONDENCE

Shreveport, Louisiana

November 20, 1961

To: Mr. J. C. Templeton

From: B. E. Harrell

Subject: U.S.A. Lease—Sligo

In answer to your letter of November 17, 1961, concerning royalty price applicable to the above lease, this is to advise that I have no particular opinion as to what price should be paid to royalty owners by ALG in this field. However, I do wish to caution you that we have a favored nations contract with W. E. Hall et al in this field and the price they are receiving is presently $0.08797 per MCF. I do not know whether our paying any royalty owner a higher price than $0.08797 would activate this favored nations clause; however, if the attorneys feel that there is no danger of a royalty price activating a favored nations clause, then I have no objection to paying the Government at a price susbstantially higher than $0.08797.

I wanted to bring this out, however, since any activation of favored nations clauses in this area would cost ALG several million dollars increase in cost of gas annually.

/s/ BILL

BEH:dm
cc: Mr. D. W. Weir
Mr. Robert Roberts, Jr.

Xerox: J. G. Cooke, Jr.
W. A. Stewart
D. E. Sullenberger

P-62

Filed in Evidence in Suit No. 225699, September 27, 1976

ARKANSAS LOUISIANA GAS COMPANY
INTERNAL CORRESPONDENCE

December 27, 1961

To: Mr. John W. Denhollem

From: Robert Roberts, Jr.

Subject: Operating Agreement—Barksdale Field Lease, Sligo Area, Bossier Parish, Louisiana.

This is in response to your memorandum of December 18, 1961, requesting my comment on recent correspondence concerning the effort to agree on a balancing provision (Section 3) for the Operating Agreement of February 1, 1961.

After our telephone conversation yesterday I find that in my file is a copy of the amendment submitted by Mississippi River Fuel Corporation with their letter of June 14, 1961. Shortly afterward I commented on Mississippi River's draft and send you herewith a copy of my memorandum to you of July 25th in that connection. I do not know that there is anything that I can add to the comments I made in that letter.

Texas Gas' letter of December 13th emphasizes the difficulty of the problem and the difference in point of view of the various parties: You do not want to buy any gas or set a price, and obviously several of the parties want to do just that.

As requested, your file is returned herewith.

Very truly yours,

/s/ ROBERT ROBERTS, JR.

Encs-
RRJr:m
cc—Messrs. J. C. Templeton
M. C. Bubenzer
J. C. Cooke, Jr.

P-65

Filed in Evidence in Suit No. 225699, September 27, 1976

UNITED STATES

DEPARTMENT OF THE INTERIOR

GEOLOGICAL SURVEY

521 Wright Building
115 West 3rd Street
Tulsa 3, Oklahoma

March 27, 1962

Arkansas Louisiana Gas Company
P. O. Box 1734
Shreveport 4, Louisiana

Attention: Mr. J. C. Templeton

Gentlemen:

Subject: Lease BLM-A-054491, your file No. 15161, Mississippi River Fuel Corporation, et al., U.S.A. Lease (Parcel 3), Sligo Field, Bossier Parish, Louisiana

We refer to your letter of January 17, 1962, with which you submitted a "Royalty Settlement Plan" for the subject lease.

You have proposed settlement for gas royalty on the volume of gas produced, less plant fuel and shrinkage, at a value of $0.08547 per MCF calculated on a pressure base of 15.025 p.s.i.a. We will allow deduction for normal plant fuel and shrinkage, but we do not regard the proposed price for gas produced from this lease as a reasonable value in a fair and open market.

The lowest price being received for gas from this lease is for that sold under a contract which provides a price of $0.117432 until January 1, 1962; $0.130252 until January 1, 1967; and $0.140508 thereafter at a pressure base of

15.025 p.s.i.a. We plan to compute the value of the Government's royalty interest in gas delivered into your pipeline system, until further notice, at the prices paid under the contract cited above, unless you can show valid reasons why the proposed price exceeds the fair value of the gas in a free and open market.

Very truly yours,

/s/ J. R. Reeve
J. R. Reeve
Regional Oil and
Gas Supervisor

Natural Gas and Oil Co.
1315 Richards Bldg.
New Orleans, Louisiana

P-77

Filed in Evidence in Suit No. 225699, September 27, 1976

UNITED STATES GOVERNMENT

MEMORANDUM

Date: 10-22-62

To: Files

From: N. Orvis Frederick

Subject: BLM-A-054491, Sligo field, Louisiana

J. C. Templeton, Vice President, Arkansas-Louisiana Gas Company, Shreveport, came in at 9:30 on Friday, October 19, 1962, to discuss the $34,723.45 deficit (as of 8-1-62) in royalty payments, mostly due to their 8.547¢ per MCF value placed on gas taken in kind being below reasonable value and below all sales from the same lease by their co-lessees.

Mr. Templeton is aware of the higher prices being paid for 85% of the gas from this lease, but maintained Ark-La is buying a great deal of gas from other producers in the field at the 8.5¢ +/MCF price by 1952 contracts (referred to in his letter to us dated 4-13-62); feared the other producers would be dissatisfied if Ark-La paid us more; and suggested a negotiated price. He was advised that these were unacceptable; that royalty would continue to be computed on the Union Producing Company price (our letter of 3-27-62) and in accordance with the lease instrument and regulations; and that Ark-La had the right of appeal.

He expressed little interest in an appeal but wished to have time to consult their attorney, who will be back from vacation in about a week, and then present the matter to the Company board (?), and that we would hear further from him in 10 to 14 days. It seemed most likely that Ark-La will agree to recalculate their royalty payments in agreement with our royalty statements.

Copy to Shreveport
NOF:ec

/s/ N. ORVIS FREDERICK
N. Orvis Frederick

P-80

Filed in Evidence in Suit No. 225699, September 27, 1976

ARKANSAS LOUISIANA GAS COMPANY
Shreveport, Louisiana

November 6, 1962

Mr. Robert Roberts, Jr.
J. C. Templeton
Sligo Royalty Price

The Advisory Council approved my recommendation that ALG increase its royalty price to that requested in the U.S. Geological Survey letter of March 27, 1962. Please prepare a letter advising the U.S.G.S. which will protect us legally. Copies should be sent to all of the partners owning an interest in the lease.

JCT:me
cc: Mr. J. G. Cooke, Jr.

P-81

Filed in Evidence in Suit No. 225699, September 27, 1976

ARKANSAS LOUISIANA GAS COMPANY
Shreveport, Louisiana

November , 1962

Mr. J. R. Reeve, Regional Oil and Gas Supervisor,
United States Geological Survey,
521 Wright Building,
115 West 3rd Street,
Tulsa 3, Oklahoma.

In re: Oil and Gas Lease BLM-A-054491,
Sligo Field, Louisiana, Parcel No. 3

Dear Sir:

This refers to your letter to Natural Gas and Oil Company of October 12, 1962 and conference between the undersigned and you in your office in Tulsa on October 19th.

By your letter of March 27, 1962 you determined prices, so far as concerns the Government's royalty gas of \$0.117432 per mcf until January 1, 1962; \$0.130252 until January 1, 1967 and thereafter \$0.140508 at a pressure base of 15.025 p.s.i.a. In view of the Government's right under the lease contract to determine the value of its royalty gas, but without conceding that the above figures represent market value in the Sligo Field, we have decided that we should accede to the determination and have initiated the proper procedures in our organization to see that accounting and payment is made for Arkansas Louisiana Gas Company's share of the gas at the above figures.

Very truly yours,

/s/ J C T
J. C. Templeton
Vice President.

cc: Murphy Corporation
Union Producing Company
Texas Gas Exploration Corporation
Natural Gas and Oil Company

RR Jr.
11-14-62

P-82

Filed in Evidence in Suit No. 225699, September 27, 1976

Arkansas Louisiana Gas Company
Shreveport, Louisiana

November 15, 1962.

M. J. R. Reeve, Regional Oil and Gas Supervisor,
United States Geological Survey,
521 Wright Building,
115 West 3rd Street,
Tulsa 3, Oklahoma.

In re: Oil and Gas Lease BLM-A-054491,
Sligo Field, Louisiana, Parcel No. 3

Dear Sir:

This refers to your letter to Natural Gas and Oil Company of October 12, 1962 and conference between the undersigned and you in your office in Tulsa on October 19th.

By your letter of March 27, 1962 you determined prices, so far as concerns the Government's royalty gas of \$0.117432 per mcf until January 1, 1962; \$0.130252 until January 1, 1967 and thereafter \$0.140508 at a pressure base of 15.025 p.s.i.a. In view of the Government's right under the lease contract to determine the value of its royalty gas, but without conceding that the above figures represent market value in the Sligo Field, we have decided that we should accede to the determination and have initiated the proper procedures in our organization to see that accounting and payment is made for Arkansas Louisiana Gas Company's share of the gas at the above figures.

Very truly yours,

/s/ J. C. Templeton
J. C. Templeton
Vice President.

cc: Washington 11/21/62
cc: Murphy Corporation
Union Producing Company
Texas Gas Exploration Corporation
Natural Gas and Oil Company

P-174

Filed in Evidence in Suit No. 225699, October 12, 1976

January 11, 1974

Certified mail
Return receipt requested

Arkansas Louisiana Gas Company
P. O. Box 1734
Shreveport, Louisiana, 71151

Attention: Mr. John Miles
Gas Purchase Contract Section

Re: Gas Purchase Contract by and between
Arkansas Louisiana Gas Company (Buyer)
and
D. B. McConnell, et al (Seller)
Date: January 11, 1952
Sligo Gas Field, Bossier Parish, La.

Gentlemen:

Please refer to that certain Gas Purchase Contract executed on the 11th day of January, 1952, by Arkansas Louisiana Gas Company, Buyer, and D. B. McConnell, et al, Seller, covering certain properties situated in the Sligo Gas Field, Bossier Parish, Louisiana. This contract covers and includes the purchase of natural gas produced from those certain oil, gas and mineral leases covering lands in the Sligo Gas Field, Bossier Parish, Louisiana, which are set out and described on "Exhibit A", attached to and made a part of said contract.

I am one of the party sellers to the contract, having executed same on January 25, 1952. The term of this contract is for the period January 26, 1952 to June 1, 1980. Section 8. *Price* of said contract provides that the price to be paid by Arkansas Louisiana Gas Company, Buyer, for each one

thousand cubic feet of gas delivered to Buyer, shall be as follows:

(e) \$0.10596—for the period June 1, 1970, through May 31, 1975, and it is my understanding that Arkansas is presently paying this price.

However, Paragraph (D) of Section 8, *Price* of the said contract contains an escalation clause which reads, in part, as follows:

"Section 8. *Price.*

(D) If at any time during the term of this agreement, Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Field at a higher price than is provided to be paid for gas delivered under this agreement, then in such event the price to be paid for gas thereafter delivered hereunder shall be increased by an amount equal to the difference between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract;"

We have received some information and advice to the effect that Arkansas Louisiana Gas Company is now purchasing gas in the Sligo Field, Bossier Parish, Louisiana, from other party Sellers at a price in excess of \$0.10596 per MCF. Specifically, we have been advised that Arkansas is purchasing gas from that part of the Sligo Gas Field, Bossier Parish, Louisiana, located within the geographical limits of the United States Military Reservation known as Barksdale Air Force Military Reservation, and is paying a price in excess of \$0.10596 per MCF.

We further understand that one of the party Sellers receiving such a price for its gas to the Arkansas Louisiana Gas Company is the United States Government, fee land owner on which some of these producing wells are located.

In accordance with the terms and provisions of my contract with Arkansas Louisiana Gas Company, dated January 11, 1952, I would, therefore, respectfully request that you please provide me with full information relating to all other Gas Purchase Contracts entered into by Arkansas Louisiana Gas Company covering purchase of natural gas in the Sligo Gas Field, Bossier Parish, Louisiana, including specifically the following, to-wit:

(1) Names and addresses of Party Sellers;

(2) Date of Contract;

(3) Current price being paid by Arkansas for natural gas per MCF;

(4) Is contract recorded and of public record? If so, please furnsh recording information in Bossier Parish, Louisiana.

I specifically request that you include in your report all gas being purchased by Arkansas from that part of the Sligo Gas Field located within the Barksdale Air Force Military Reservation, and any gas being purchased from the United States Government.

This request is made pursuant to the provisions of my existing contract with Arkansas Louisiana Gas Company, dated January 11, 1952, and for the purpose of determining if I am entitled to a higher price for my natural gas production which is being purchased by Arkansas.

Thanking you in advance for a prompt reply to this request.

Yours truly,

/s/ W. E. Hall, Jr.

WEH:da
bcc: Mr. Frank J. Hall

P-175

Filed in Evidence in Suit No. 225699, October 12, 1976

LAW OFFICES
HALL AND COLTHARP
P. O. Box 151
Deridder, Louisiana 70634

January 30, 1974

Arkansas Louisiana Gas Company
P. O. Box 1734
Shreveport, Louisiana, 71151

Attention: Mr. John Miles
Gas Purchase Contract Section

Re: Gas Purchase Contract by and between
Arkansas Louisiana Gas Company (Buyer)

and

D. B. McConnell, et al (Seller)
Date: January 11, 1952
Sligo Gas Field, Bossier Parish, La.

Dear Mr. Miles:

Please refer to my letter of January 11, 1974, wherein I requested information concerning the possible purchase of natural gas by Arkansas Louisiana Gas Company in the Sligo Gas Field of Bossier Parish, Louisiana, from other sellers in excess of the price presently being paid under the terms of the above contract, dated January 11, 1952, entered into by Arkansas Louisiana and D. B. McConnell, et al, Sellers.

Specifically, we have been advised that Arkansas Louisiana Gas Company is now, and has been in the past, purchasing natural gas in the Sligo Gas Field, Bossier Parish, Louisiana, from the United States of America and is paying approximately $0.19 cents per MCF. If this is a fact, then

we are of the opinion that Paragraph (D) of Section 8, *Price*, of the aforesaid contract would apply and that Arkansas Louisiana would be liable to the sellers under the terms of the McConnell Contract, dated January 11, 1952, for such higher price being paid to the United States of America.

We would, therefore, again respectfully request that you please furnish us with this information, as requested in our letter of January 11, 1974, concerning the price for natural gas being paid to the United States of America for natural gas produced in the Sligo Gas Field, Bossier Parish, Louisiana.

Thanking you in advance for a prompt reply to this request.

Yours truly,

/s/ W. E. Hall, Jr.
W. E. Hall, Jr.

WEH:da
bcc: Mr. Frank J. Hall

P-176

Filed in Evidence in Suit No. 225699, December 3 ,1976

ARKANSAS LOUISIANA GAS COMPANY
INTERNAL CORRESPONDENCE

Shreveport, Louisiana
January 15, 1974

To: Mr. G. L. Hetherwick

From: Jim Monk

Subject: D. B. McConnell, et al—Sligo Field, Louisiana

Enclosed is a copy of a letter dated January 11, 1974, concerning prices paid from the above referenced field. Please draft a reply to this letter stating that "we have not exceeded the price stated in the contract." Therefore, the "Favored Nations" part of this contract has not been activated. I have enclosed the permanent file for your reference.

JMM:jj
Enclosures

P-177

Filed in Evidence in Suit No. 225699, December 3, 1976

Arkansas Louisiana Gas Company
INTERNAL CORRESPONDENCE

Shreveport, Louisiana
January 17, 1974

To: Mr. Jim Monk

From: Gilbert L. Hetherwick

Subject: D. B. McConnell, *et al*
Sligo Field, Louisiana

Attached is a draft of a letter responding to Will Hall's letter of January 11, 1974, in accordance with your request of January 15, 1974.

I drafted this response like you requested to simply state that we are not paying a higher price than the price in his contract. However, that is not what he asked for. He asked for specific information concerning all contracts in the Sligo Field and particularly information concerning the price we are paying the United States Government (see page 2 of his letter).

I assume from your request that you meant to deliberately not give him what he had asked for. However, I would point out that Will Hall is a lawyer and our response looks like we may be putting him off. All he has to do is draft a petition and file it in order to sue us and then he can subpoena all the contracts he wants information about. This would be troublesome and probably expensive for Arkla and I would suggest that you would consider giving him more specifically the information he asks for unless there is some reason not to.

Your file is returned herewith.

Very truly yours,

/s/ G.L.H.

GLH/fm
Attachments

P-178

Filed in Evidence in Suit No. 225,699, December 3, 1976

ARKANSAS LOUISIANA GAS COMPANY
P. O. Box 1734 • Shreveport, Louisiana • 71151

January 18, 1974

Mr. W. E. Hall, Jr.
Hall and Coltharp
P. O. Box 151
DeRidder, Louisiana 70634

Re: Gas Purchase Contract by and between
Arkansas Louisiana Gas Company (Buyer)

and

D. B. McConnell, *et al* (Seller)
Date: January 11, 1952
Sligo Gas Field, Bossier Parish, Louisiana

Dear Mr. Hall:

We have your letter of January 11, 1974, asking for certain information in regard to the Favored Nations Clause in your contract of January 11, 1952.

Please be advised that we have not paid and are not paying another party seller for gas produced from any wells in the Sligo Gas Field a higher price than is provided to be paid for gas delivered under your contract.

Very truly yours,

John C. Miles

GLH/fm

P-192

Filed in Evidence in Suit No. 225699, October 7, 1976

BLANCHARD, WALKER, O'QUIN & ROBERTS
First National Bank Building
Post Office Drawer 1126
Shreveport, Louisiana 71163
Telephone (318) 221-6858

August 19, 1975

Air Mail
Securities and Exchange Commission
Attention: Mr. Blair Corkran
Division of Corporation Finance
Washington, D. C. 20549

RE: Arkansas Louisiana Gas Company,
Registration No. 2-54218, Form S-9

Dear Sirs:

This is in response to telephone conversation on Monday, August 18, yesterday, between Mr. Corkran and the undersigned as attorney for Arkansas Louisiana Gas Company. Mr. Corkran inquired as to whether the pending lawsuit of Frank J. Hall and fourteen other plaintiffs against Arkansas Louisiana Gas Company (the "Company"), No. 225,699 on the docket of the First Judicial District Court of Louisiana within and for the Parish of Caddo, should be described in the preliminary prospectus dated July 21, 1975, a part of the above registration, under the caption "Legal Proceedings" on page 19.

The suit referred to was filed in the First District Court, Caddo Parish, in October 1974, by fifteen plaintiffs, against the Company. The plaintiffs brought the suit on a contract between them (or in certain instances their predecessors) with a number of other sellers not party to the suit and the Company for the sale of gas to be produced from certain gas production properties in the Sligo Gas Field, Bossier Parish, Louisiana. The contract was executed in January,

1952, and its term extends into 1980. The suit claimed that the agreed prices under the contract, by reason of payments made by the Company to the Federal Government under an oil and gas lease, beginning in 1961 were increased and had not been properly paid by the Company. The suit asked for a declaratory judgment, an accounting, and unspecified damages in the amount of $1.5 million. The defendant answered the suit denying plaintiffs' version of the agreement and claiming that the prices to the plainitffs had been properly calculated and paid. After extensive preliminary proceedings, the plaintiffs on June 12, 1975 superseded their original demand with an amended petition on which the action is now pending. The amended petition appears to be for the same demand and on the same legal and factual basis as to the plaintiffs' claim, but instead of asking for an accounting, seeks damages for breach of the contract in an amount of $8,755,000 and cancellation of the contract. The Company believes that it has paid plaintiffs all sums due under the contract and expects to prevail on the principal issue of the suit. In addition, there are a number of other issues, the decision of which will be material if plaintiffs should prevail on their claim; for example, prescription (limitation), whether the Federal Power Commission has sole jurisdiction over plaintiffs' demand, the effect on the agreement and its interpretation and performance of the Natural Gas Act and the Federal Power Commission's regulations thereunder. It should also be stated that plaintiffs' demand, if they should prevail on their principal claim, is estimated by the Company to be not more than $3,500,000.

The reason this lawsuit was not reported in the prospectus is that, in our opinion, it is not "material" in the sense in which the Commission uses that term in its rules with regard to the preparation of prospectuses. If the entire eight million dollar claim should be considered at issue in the suit, it would affect earnings by additional gas purchase expense with an offset to the extent of 50% by reduc-

ing income taxes, and, as we understand the proper accounting, the additional expense would be spread over the fourteen years back to 1961. If the entire amount at risk in the suit should be considered as affecting the year in which a judgment might become final, the risk, $4,377,000, would be barely more than 10% of the net income of the Company for the year ending May 31, 1975, as reported in the prospectus, and could be compared also with the income from continuing operations before income taxes (58.60 million dollars), and with the income from continuing operations (39.24 million dollars). The amount claimed is obviously less than 10% of current assets and less than 5% of total assets—tests of materiality which are mentioned in certain of the Commission's rules. The annual reduction in income would be in the order of $315,000.

We have no objection to describing the lawsuit in the prospectus; but since it is an action of the kind normally experienced in the business in which the Company is engaged, and it appears that a complete loss of the suit would not materially affect the Company or its prospects, we concluded that it should not be described in the prospectus.

We would be glad to have your conclusions on this point.

Very truly yours,

/s/ Robert Roberts, Jr.
Blanchard, Walker,
O'Quin & Roberts

RRJr/er
cc: Eugene R. Sullivan, Esq.
David G. Ormsby, Esq.

P-320-B

Frank J. Hall, et al v. Arkansas Louisiana Gas Company

Suit No. 225,699

Plaintiffs	Damages*	Less Deduction for ¼¢ per Mcf Interest Thereon	Credit for** All Pertinent Factors and Interest Thereon	Sub-Total of Damages	Credit for Shrinkage Factor	Net Recoverable Damages
Hall Interests						
Frank J. Hall	532,440,81	12,717.26	76,615.79	443,107.76	19,939.85	423,167.91
W. E. Hall, Jr.	290,422.32	6,936.69	41,790.86	241,694.77	10,876.26	230,818.51
Virgil J. Hall	145,211.16	3,468.35	20,895.41	120,847.40	5,438.13	115,409.27
Harrell Interests						
Carlyle W. Urban, Trustee	830,923.47	19,846.47	146,958.04	664,118.96	29,885.35	634,233.61
John K. Harrell, Sr.	103,865.44	2,480.81	18,370.51	83,014.12	3,735.64	79,278.48
James E. Harrell	103,865.44	2,480.81	18,370.51	83,014.12	3,735.64	79,278.48
Seymour Weiss Interests						
Elva L. Weiss	226,548.93	5,411.09	35,099.93	186,037.91	8,371.71	177,666.20
National American Bank, Executor	226,548.93	5,411.09	35,099.93	186,037.91	8,371.71	177,666.20
T. F. Philyaw	3,584.61	85.62	(388.32)	3,887.31	174.93	3,712.38
W. O. Cochran	17,180.49	410.35	1,572.63	15,197.51	683.89	14,513.62
D. B. McConnell	247,211.51	5,904.61	102,884.65	138,422.25	6,229.00	132,193.25

S. G. Myers	124,830.81	2,981.56	(14,502.49)	136,351.74	6,135.83	130,215.91
James A. Noe	539,636.42	12,889.13	25,670.46	501,076.83	22,548.46	478,528.37
Asa Benton Allen	79,261.60	1,893.15	6,915.51	70,452.94	3,170.38	67,282.56
Elaine Allen	73,332.65	1,751.54	3,272.91	68,308.20	3,073.87	65,234.33
TOTALS	3,544,864.59	84,668.53	518,626.33	2,941,569.73	132,370.65	2,809,199.08

* These computations include production runs through December 31, 1975 and damages for loss of use of money through June 30, 1976.

** Pertinent Factors

1. Louisiana Severance Tax Reimbursement
2. Compression charges, deductions and expenses
3. Condensate payments
4. Dehydration charges
5. Delivery points
6. Basis of measurement
7. Delivery pressures
8. Gasoline and L.H.C. "G.P.M." content
9. Shrinkage factors

P-335

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Number C-75-1168

FRANK J. HALL, ET. AL., *Plaintiffs*

vs.

ARKANSAS LOUISIANA GAS COMPANY, *Defendant*

James Fleet Howell, Esq.
Feist, Schober & Howell
Shreveport, Louisiana
Attorney for Plaintiffs

Robert Roberts, Jr., Esq.
Marlin Risinger, Jr., Esq.
W. Michael Adams, Esq.
Blanchard, Walker, O'Quin & Roberts
Shreveport, Louisiana
Attorneys for Defendant

RUBIN, District Judge:

This suit was filed in Louisiana State Court seeking damages for alleged breach of contract. Sixteen months later, the plaintiffs amended their state petition. The defendants promptly removed to federal court, on the basis that the amendment raised a federal question. The plaintiffs countered with a motion to remand. Since the amended complaint does not appear to pose a case arising under the Constitution or laws of the United States, the motion to remand is GRANTED. The facts and authorities that require this conclusion follow:

I.

The plaintiffs first filed suit in state court on July 18, 1974. The plaintiffs alleged that they are producers of

natural gas in the Sligo Field in northern Louisiana who entered into a gas purchase agreement on January 11, 1952, pursuant to which they were to sell natural gas to the defendant at a stated price per mcf of gas. The gas purchase agreement includes a "Favored Nations Clause," which provides for an increase of the price to be paid the plaintiffs if the defendant pays a higher price to any other producer in the Sligo Field who subsequently sells gas to the defendant.[1]

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[1] (D) If at any time during the term of this agreement Buyer should purchase from another party seller gas produced from the subject wells or any other well or wells located in the Sligo Gas Field at a higher price than is provided to be paid for gas delivered under this agreement, then in such event the price to be paid for gas thereafter delivered hereunder shall be increased by an amount equal to the differences between the price provisions hereof and the concurrently effective higher price provisions of such subsequent contract; provided that in determining whether a given price is in fact ''higher'' than the price provisions of this contract, the inquiry shall not be limited to the actual prices stipulated but due consideration shall also be given to a comparison of all other pertinent provisions of the two contracts, such as point of delivery, basis of measurement, taxes, dehydration, and delivery pressures (provided that the number of years stated as the terms during which the two contracts shall respectively remain in force and effect shall not be a factor to be considered for the purposes of comparison under this paragraph) and the price to be thereafter payable in accordance with this paragraph for gas delivered hereunder shall be adjusted accordingly insofar as may be necessary to make allowance for any discrepancies as may exist between such comparable provisions of the two contracts. It is agreed that any such higher price for gas delivered hereunder shall be effective on the first day of Buyer's accounting month (as elsewhere herein defined) next following the effective date of such subsequent contract, all subject, however, to any rules and regulations of the Office of Price Stabilization or any other regulatory body having jurisdiction.

The plaintiffs alleged that, beginning in September, 1961, defendant breached the gas purchase agreement by paying to the United States a higher price for gas and liquified hydrocarbons produced from the same field than the sellers paid the plaintiffs, and by failing and refusing to inform the plaintiffs of these payments to the United States. This claim is clearly merely a claim for breach of a contract, and would be determined by state law.

Multiple defenses were raised. On May 30, 1975, the defendant filed a supplemental and amended answer, urging that the Federal Power Commission "has sole jurisdiction over the sale of gas by plaintiffs to Arkansas Louisiana Gas Company under the January 11, 1952 gas purchase contract . . ;" that "[u]nder Section 4(d) of the Natural Gas Act, 15 U.S.C. § 717d, plaintiffs are required to give notice of any proposed increase of rates;" that the plaintiffs have not done this; and the FPC is the only tribunal that may lawfully determine the issues raised by the plaintiffs. The defendant finally urged that "by order of the Federal Power Commission in *Other Southwest Area Rate Order No. 607 and 607-A*, plaintiffs may not, even if the price be contractually authorized, collect under the subject contract for gas currently being delivered any rate higher than the area rate, namely, a rate of 20.6¢ per mcf, with lesser maximum prices applicable to earlier periods." The defendant also filed an exception of no cause of action and, alternatively, a motion for summary judgment. These were argued and submitted on briefs.

In an effort to meet the legal barriers thus defensively erected, the plaintiffs filed successive supplemental pleadings. In their Second Supplemental and Amended Petition, (the Second Petition), which superseded all of their prior pleadings, the plaintiffs repeated the basic allegations made at the beginning of the suit. In addition the plaintiffs alleged:

> "The plaintiffs herein agree and concur with the statement and conclusion of Arkansas Louisiana Gas

Company's attorney and counsel, Mr. Gilbert L. Hetherwick, a member of the Law Firm of Blanchard, Walker, O'Quin & Roberts, as set forth in his Arkansas Louisiana Gas Company memorandum dated June 26, 1974, a copy of which is annexed hereto, to the fact that the plaintiffs herein, as Small Producers under Section 157.40(e) of the Federal Power Commission Rules and Regulations (18 C.F.R., Section 157.40) can automatically get the benefit of a favored nations clause if it is activated, although they cannot thereby go to a price which is above the applicable just and reasonable area rate. A copy of Section 157.40(e) of the Federal Power Commission Rules and Regulations is attached hereto and made a part hereof and the plaintiffs herein respectfully request that this Honorable Court take judicial notice thereof."

The defendant's thesis is that the Second Petition necessarily implies that the sellers were selling natural gas in interstate commerce for resale, hence the plaintiffs are a natural gas company, and that all the sales have been made subject to a schedule of rates on file with the FPC as required by the Natural Gas Act. Explicit allegations of this kind are nowhere found in plaintiffs' pleadings; the conclusion that the petition embodies these claims is derived by inference from the general allegations and from Article 22.

Turning to Article 22, the defendants contend this must be read as asserting both that the plaintiffs have a status under the Natural Gas Act as small producers, and that this status entitles them to receive a rate higher than the rates filed. Since these are matters to be determined by federal law, rather than state law, the argument runs, the Second Petition raises a federal question.

II.

Federal jurisdiction over cases filed in state court is conferred by 28 U.S.C. § 1441, which, in pertinent part, provides, "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties, or laws of the United States shall be removable." (Emphasis supplied.) The original jurisdiction of federal district courts is stated in virtually identical terms: it consists of "all civil actions wheren the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and *arises under* the Constitution, laws, or treaties of the United States." 28 USCA § 1331. (Emphasis supplied.) Of necessity then, when a case is sought to be removed, the jurisdictional issue is whether the action is one that would be within the jurisdiction of the federal district court had it been filed there initially. See Moore's Federal Practice ¶ 0.60[9]. The language in both statutes traces Aritcle III of the Constitution: "The judicial power shall extend to all cases in law and equity arising under this Constitution, [and] the laws of the United States. . . ." Art. III, § 2.

Since 1824, Osborn v. Bank of the United States, 1824, 22 U.S. (9 Wheat.) 738, has furnished the standard for interpretation of the constitutional provision: "that the title or right set up by the party, may be defeated by one construction of the Constitution or law of the United States, and sustained by the opposite construction," 22 U.S. at 822, regardless whether other "questions may arise in it, which depend on the general principles of the law, not on any act of Congress." Ibid.

But there are potential federal questions in almost every litigation: if nothing else is presented, questions may arise as to the constitutionality of governing state law. Currie, Federal Courts 315. Of practical necessity, jurisdiction should be determinable when a suit is filed; else the case might be litigated entirely at great expense to the parties

and the public, only for them to find that all was for naught because the court lacked jurisdiction. Latent issues, sufficient to confer jurisdiction under some circumstances, might or might not arise.

Hence jurisdiction must be determined on the face of the plaintiff's complaint; this is the well-pleaded complaint rule, formulated in Louisville & Nashville R.R. v. Mottley, 1908, 211 U.S. 149, 29 S. Ct. 42. That was an action in federal court to compel specific performance of a contract to give the plaintiffs railroad passes for their lives. The complaint alleged that the railroad had declined to renew the passes, basing its refusal on an act of Congress that forbade the giving of free passes. The bill alleged that the act did not apply, but, if it did, it was unconstitutional. The Supreme Court said:

> "It is the settled interpretation of these words, as used in this statute, conferring jurisdiction, that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action and asserts that the defense is invalidated by some provision of the Constitution of the United States. Although such allegations show that very likely, in the course of the litigation, a question under the Constitution would arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under the Constitution." 29 S.Ct. at 43.

Hence the federal courts lacked jurisdiction.

Commentators note that the *Mottley* rule operates to "exclude from the federal courts a considerable category of cases in which there is an actual dispute over federal rights. . . ." Currie, op. cit. supra at 328; Moore's Federal Practice ¶ 0.60[8-4]. Nonetheless, the rule serves so useful

a purpose that the American Law Institute, in a study of the jurisdiction of the federal courts, urged its retention. ALI Study of the Division of Jurisdiction between State and Federal Courts (1969) § 1311, p. 188-191. The Reporters' reasoning parallels the original pragmatic justification for the rule.

> "A litigant who invokes the jurisdiction of the federal court ought to be able to do so with some fair assurance that the case will be determined in that court. He cannot do so if his jurisdictional allegation is, of necessity, no more than a guess as to the strategy his opponent will follow. The time of the court and the lawyers, and the money of the litigants, would be wasted needlessly on the preliminary stages in federal court of a case which is ultimately dismissed. Some protection would have to be given the plaintiff, in a case which is so dismissed, against being barred from a subsequent state action by a state statute of limitations."

The application of the *Mottley* rule to the Declaratory Judgment Act, 28 U.S.C. § 2201, was considered in Skelly Oil Co. v. Phillips, 1950, 339 U.S. 667. Phillips had contracted to buy gas from Skelly for resale to a pipe-line company. Each of the several contracts involved gave Skelly the right to terminate if the pipe-line company did not secure an FPC certificate for its line. After a certificate was issued, Skelly gave notice of termination. Phillips sued for a declaratory judgment that the contracts were still in effect. In discussing whether there was federal jurisdiction, the Supreme Court said:

> "If Phillips sought damages from petitioners or specific performance of their contracts, it could not bring suit in a United States District Court on the theory that it was asserting a federal right. And for the simple reason that such a suit would 'arise' under the State law governing the contracts. Whatever federal claim Phillips may be able to urge would in any event

be injected into the case only in anticipation of a defense to be asserted by petitioners. 'Not every question of federal law emerging in a suit is proof that a federal law is the basis of the suit.' Gully v. First National Bank, 299 U.S. 109, 115; compare 28 U.S.C. § 1257, with 28 U.S.C. § 1331. Ever since Metcalf v. Watertown, 128 U.S. 586, 589 it has been settled doctrine that where a suit is brought in the federal courts 'upon the sole ground that the determination of the suit depends upon some question of a Federal nature it must appear, at the outset, from the declaration or the bill of the party suing, that the suit is of that character.' But 'a suggestion of one party, that the other will or may set up a claim under the Constitution or laws of the United States, does not make the suit one arising under that Constitution or those laws.' Tennessee v. Union & Planters' Bank, 152 U.S. 454, 464. The plaintiff's claim itself must present a federal question 'unaided by anything alleged in anticipation of [sic] avoidance of defenses which it is thought the defendant may interpose.' Taylor v. Anderson, 234 U.S. 74, 75-76; Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 152. 339 U.S. at 672."

The issue, then, is correctly stated by Ark-La: "whether plaintiffs' Second [Petition] has made a claim that states a federal question and this issue turns on the words of that Second [Petition] and, to the extent relevant, the circumstances of its filing."

Congress' Choice Of Laws Applicable To The Natural Gas Industry

Not all issues arising in the natural gas industry are federal questions. Although Congress doubtless had authority to regulate at least all of the interstate aspects of the natural gas industry, it has never asserted this power. Instead, in the Natural Gas Act, it limited itself to regula-

tion of those areas that were, under the Commerce Clause theory as articulated in 1938, when the Act was passed, beyond the constitutional limits of state regulatory authority.

The Act therefore asserts limited federal authority, and confirms state authority over all other aspects of the industry. The Report of the House Committee on Interstate and Foreign Commerce makes this evident. H.R. Rep. No. 709, 75th Cong. 1st Session 1 (1937) states:

> "The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. (See *Pennsylvania Gas Co.* v. *Public Service Commission* (1920), 252 U.S. 23.) There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction." H.R. Rep. No. 709, 75th Cong., 1st Sess. 1 (1937).

The scope of federal regulation was deliberately narrow, as the Supreme Court concluded in Panhandle Eastern Pipe Line Co. v. Public Service Comm'n of Indiana, 1947, 332 U.S. 507, 516, 68 S. Ct. 190, 195, 92 L.Ed. 128:

> "Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale."

Contractual claims for breach of a natural gas contract presented under state contract law are not drawn into

federal jurisdiction because ultimate resolution of the claims may involve interpretation of the Natural Gas Act. Pan American Petroleum Co. v. Superior Court of Delaware, 1961, 366 U.S. 656, 81 S. Ct. 1303, 6 L.Ed.2d 584. Jurisdiction is "not determined by ultimate substantive issues of federal law." 366 U.S. at 662, 81 S. Ct. at 1307. It depends on "how he [the plaintiff] casts his action." Ibid.

Accordingly, the mere fact that this suit involves a contract for the purchase of natural gas does not mean that this case "arises under" the Natural Gas Act or a body of federal common law governing such contracts. City of New Orleans v. United Gas Pipe Line Co., E.D. La. 1974, 390 F. Supp. 891.

The reference to federal law in the Second Petition is on its face the anticipation of a defense: that the Favored Nations clause of the contract is unenforceable because of federal law. To prove the invalidity of this defense the plaintiffs must prove both their status and their right to receive the rates they seek under FPC regulations. But these two issues arise only by way of countering the anticipated defense that the plaintiffs may not recover under their Louisiana contracts, the basic right they assert. The anticipation was not spectral, as the history of the action in state court demonstrates: the defense that the state contract could not be relied upon because of federal law had in fact been urged, and plaintiffs feared dismissal of their case under the exception of no cause of action on the basis of this defense. But since plaintiffs sued for breach of contract, here, as in Phillips Petroleum Company v. Texaco, Inc. 1974, 415 U.S. 125, 128, 94 S.Ct. 1002, 1004, 39 L.Ed.2d 209, "it is clear that their [the Natural Gas Act and regulations of the FPC] effect is no more than to overcome a potential defense to the action."[2] See also Taylor v. Anderson, 1914, 234 U.S. 74, 34 S.Ct. 724, 38 L.Ed. 1218.

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[2] Phillips is distinguishable, but the preposition quoted is applicable here.

Paragraph 22 of the Second Petition does not in haec verbae indicate that plaintiffs' claim for small producer status and rates is made in anticipation of a defense, but a fair construction of the entire complaint in the light of the history of the law suit demonstrates that Paragraph 22 is counter-defensive in nature. Stated in simplest form, the plaintiffs' arguments in the Second Petition are:

1. Plaintiffs and defendants have a contract under state law.
2. Defendant has violated the contract.
3. Plaintiffs may recover under state law.
4. This claim is not affected by federal law.
5. If it is, the plaintiffs still have a claim.

The plaintiffs' claim that they have the status of small producers is not an essential element of their cause of action. See Gully v. First National Bank, 1936, 299 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70. That alleged status and the prices recoverable, if it applies, are arguments that their state rights under the Favored Nations Clause are not erased by the Natural Gas Act. This entire issue becomes pertinent only if the plaintiffs fail in their primary postulate, that they have a contract that is controlled by state law. The claim here is different from the one the plaintiffs made in Montana-Dakota-Utilities Company v. Northwestern Public Service Company, 1951, 341 U.S. 246, 71 S.Ct. 692, 95 L.Ed. 912, for in *Montana-Dakota* the plaintiffs sought to obtain payment in accordance with rates filed with the FPC under the Federal Power Act; here the suit is for rates fixed by contract and the Commission-filed rates are involved only if asserted to defeat recovery.

Even if the plaintiffs were claiming that the regulations of the Commission gave them a cause of action, without reference to the contractual language, the Second Petition would not state a claim "arising under the Constitution and

Laws of the United States." The complaint must not only state a "federal question," but a substantial one; a claim "so attenuated and unsubstantial as to be absolutely devoid of merit" will not confer jurisdiction. Newburyport Water Co. v. Newburyport, 1904, 193 U.S. 561, 579, 24 S.Ct. 553, 557. See Hagans v. Lavine, 1974, 415 U.S. 528, 94 S.Ct. 1372. The regulation in question, 18 C.F.R. § 157.40,[3] evidences no intention to *grant* small producers a right to an increase in price in the absence of some contractual provision allowing such an increase. To attempt to read such an effect into the provision would be so fanciful and far-fetched that it would not serve as a basis of federal question jurisdiction if it in fact had been urged by the plaintiffs.

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[3] The pertinent parts of the regulation read as follows:

(c) Exemption under blanket certificate. Small producers certificated hereunder shall be authorized to make small producer sales nationwide pursuant to existing and future contracts at the price specified in each such contract. However, no small producer shall be relieved from compliance with section 7(b) of the Natural Gas Act with respect to any small producer sale exempted hereunder. The exemption authorized herein shall not apply to any jurisdictional sale made by a small producer where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer.

* * *

(e) Limitation on contractual provisions. No Small Producer granted exemption under paragraph (c) of this section shall charge or collect any rate for a small producer sale of natural gas in excess of the applicable area just and reasonable base rate ceiling, or, where none is available, the appliable area guideline initial rate ceiling, where the contractual right to such rate is based upon any contractual provision which would not be permitted by paragraphs (a), (b), (b-1), and (c) of § 154.93 of this chapter. For the purposes of this limitation, it shall make no difference whether the contract was executed prior to or subsequent to April 3, 1962.

Accordingly, the case is REMANDED to the First Judicial District Court, Parish of Caddo, State of Louisiana, defendant to bear all costs.

/s/ ALVIN B. RUBIN
United States District Judge

New Orleans, Louisiana, this 29th day of January, 1976

Western District of Louisiana. This to to certify that the above and foregoing contained on this and preceding 10 pages is a true and correct copy of the original.

ROBERT H. SHENWELL, Clerk
February 13, 1976
By /s/ RUTH ELKINS
Deputy Clerk

P-336

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Number C-75-1168

FRANK J. HALL, ET AL, *Plaintiffs*

versus

ARKANSAS LOUISIANA GAS COMPANY, *Defendant*

James Fleet Howell, Esq.
Attorney for Plaintiffs

Robert Roberts, Jr., Esq.
Marlin Risinger, Jr., Esq.
W. Michael Adams, Esq.
Attorneys for Defendant

RUBIN, District Judge:*

The brief filed by Arkansas Louisiana Gas Company demonstrates at most that the defenses to the complaint raise issues that may require resolution under federal law, but the complaint is nonetheless founded upon state law. Whether state law is, or is not, ultimately determinative of the issues presented must be decided by the state court. See Eastern Petroleum Co. v. Kerr-McGee Corp., 7th Cir. 1971, 447 F.2d 569, where a case involving similar issues was removed to federal court on the ground of diversity but state law was applied. The jurisprudence relied upon in the motion for reconsideration indicates the correctness of the remand. In Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 1951 71 S.Ct. 692, it was the plaintiff who claimed that past rates were unreasonable

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* **Visiting Judge.**

within the meaning of the Federal Power Act; here the plaintiffs claim that they are entitled to a rate established by a contract, the validity and interpretation of which must be determined by state law. See City of New Orleans v. United Gas Pipe Line Co., E.D. La. 1974, 390 F.Supp. 861, 865. If paramount federal law alters that interpretation, this is a matter of defense.

The stay order is vacated, and the remand to state court shall take effect without further orders.

/s/ Alvin B. Rubin
United States District Judge

New Orleans, Louisiana
February 13, 1976

P-337

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Civil Action No. 75-1168

FRANK J. HALL, ET AL

versus

ARKANSAS LOUISIANA GAS COMPANY

JUDGMENT

Filed February 5, 1976

This action having been submitted on the record to the Court, Honorable Alvin B. Rubin, District Judge, presiding, on plaintiffs' motion to remand, and the issues having been duly considered and an opinion having been duly rendered on January 29, 1976, granting said motion.

IT IS ORDERED AND ADJUDGED that this case be, and same hereby is, remanded to the First Judicial District Court, Caddo Parish, at defendant's costs.

The Clerk of this Court is hereby directed to mail certified copy of this judgment to the Clerk of said State Court, as required by T. 28, U.S.C. Sec. 1447(c).

New Orleans, Louisiana, this 2nd day of February, 1976.

/s/ ALVIN B. RUBIN
United States District Judge

Attest: A true copy
Date: February 5, 1976

/s/ By: RHONDA M. LAFITIE
Deputy Clerk, ...
Western District of Louisiana

D-55

EXHIBIT "B"

Filed in Evidence in Suit No. 225,699, January 10, 1977

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached 5 pages are true and correct copies of a document on file with the Commission.

Date: November 16, 1976

/s/ KENNETH F. PLUMB
Secretary

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CONTRACTS: JURISDICTION

ARKANSAS LOUISIANA GAS COMPANY
v.
FRANK J. HALL, *et al.*

Before Commissioners: Richard L. Dunham, Chairman; Don S. Smith, John H. Holloman III, and James G. Watt

Docket No. RI76-28

ORDER DENYING PETITION

(Issued March 8, 1976)

Arkansas Louisiana Gas Company (Arkla) on September 11, 1975, filed a petition for a declaratory order in the above-entitled proceeding contending that the "favored nations" clause in the January 11, 1952 contract with Frank J. Hall, *et al.* (Respondents) was not triggered by certain royalty payments made to the United States Government by Arkla.

On or about January 11, 1952, Respondents, or their predecessors, entered into a written agreement with Arkla providing for the sale by them to Arkla of natural gas to be produced from Respondents' wells in the Sligo Gas Field, Bossier Parish, Louisiana, for a primary term expiring in 1980. The contract is on file with the Commission as Respondents' FPC Gas Rate Schedule No. 4. Under this contract if Arkla should purchase gas from any other well in the Sligo Gas Field at a higher price than that paid to the Respondents, then the price to be paid to the Respondents must be increased accordingly.

On July 18, 1974, Respondents brought suit against Arkla in the First Judicial District Court, Caddo Parish, Louisiana,[1] claiming that the higher royalty payments made to the United States by Arkla with respect to certain of its on-system pipeline production in the Sligo Gas Field have triggered the favored nations provision in the contract and that Arkla has incurred substantial liabilities to Respondents at the higher rate for gas purchased under such contract. On March 14, 1975 in the same court docket, Arkla filed a Petition in Reconvention seeking a declaratory judgment from the court, and filed a motion for a separate trial.

In its petition Arkla contends that such royalty payments to the United States did not and will not constitute a "purchase from another party seller [of] gas produced from a well or wells located in the Sligo Gas Field." Arkla further argues that the controversy involves matters within the Commission's exclusive jurisdiction over which a court has no jurisdiction because Respondents must first exhaust their administrative remedies.

Respondents on October 17, 1975, filed a preliminary answer and response seeking an order dismissing Arkla's petition to the Commission and arguing that Louisiana state courts have jurisdiction in this matter, and that the Commission has no authority to issue a declaratory order divesting the courts of such jurisdiction. Respondents also argue that Arkla is estopped from filing the petition with the Commission having affirmatively invoked the jurisdiction of the Louisiana courts by its Petition in Reconvention. On the same day, Respondents filed a motion for a continuance and stay of these proceedings, reserving a right to file a complete answer to Arkla's petition, and a motion to conduct discovery and to have any hearing conducted in Shreveport, Louisiana.

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[1] The action brought by Respondents is entitled "*Frank J. Hall, et al.* v. *Arkansas Louisiana Gas* Company," Docket No. 225,699.

On December 1, 1975, Arkla filed a response to Respondents' preliminary answer and filed answers opposing Respondents' aforementioned motions, therein reasserting the jurisdiction of the Commission. On December 15, 1975, Respondents filed supplements to their preliminary answer and motion for continuance and stay of these proceedings. Thereafter, on December 22, 1975, Arkla filed responses to Respondents' supplements to their preliminary answer and motion. On January 10, 1976, the Respondents filed an answer and response to the above pleadings filed by Arkla on December 22, 1975.

The jurisdictional issue before us arises out of an alleged breach of contract by Arkla for its failure to pay the Respondents a higher rate for natural gas pursuant to the favored nations clause in the underlying sales contract. Respondents have brought suit in the Louisiana courts to collect these higher rates maintaining that only the courts can resolve such contractual questions. Conversely, Arkla contends that the Commission has exclusive jurisdiction over all matters related to the sale of natural gas in interstate commerce.

There is no question that the sales of natural gas by Respondents to Arkla are subject to the jurisdiction of the Commission. Under the Natural Gas Act matters of rate regulation, filing and notice procedures are within the express statutory authority of the Commission.[2] Certainly, in determining the justness and reasonableness of a proposed rate, the Commission may exercise exclusive jurisdiction. However, there is a threshold question as to the contractual basis of such rates. It has been Commission policy to defer action on contract questions presented to it involving jurisdictional sales which are pending in court. An examination of two prior Commission decisions is indicative of this policy.

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[2] 15 U.S.C. & 717c.

In orders issued on October 9, 1964 and December 3, 1964, 32 FPC 966, 1394, in *Pan American Petroleum Corporation, et al.,* Docket Nos. RI63-481, *et al.,* the Commission deferred action on proposed increased rates pending final determination of a complaint in state court. Since the contractual question pivoted on an interpretation of state statutes and since litigation was pending before the state court which would yield such interpretation, the Commission exercised its discretion by deferring action pending state court action.

Similarly, in *Merle M. Rowan, et al.* v. *Allied Chemical Corporation,* Docket No. RI68-136, 39 FPC 64 (Issued January 17, 1968), the Commission deferred action with regard to a proposed rate increase pending final determination of the contract questions in a United States district court. In that case, as in the instant proceeding, a higher rate was sought pursuant to the favored nations clause in the underlying gas sales contract. There, the Commission determined that it would be appropriate to defer to the court to decide these contract questions.

The circumstances of the dispute between Arkla and Respondents do not call for any different result than that reached in the *Pan American* case, *supra,* or the *Rowan* case, *supra.* This case presents a question of concurrent jurisdiction, not primary or exclusive jurisdiction.[3] The Commission has jurisdiction over rates, filing and notice as to both Arkla and Respondents. Whle this Commission has jurisdiction to decide the subject contract question, the Louisiana court also has jurisdiction over an action based upon asserted breach of contract. Accordingly, we believe it appropriate to defer to the court to decide these contract questions.

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[3] *Cf. Ashland Oil & Refining Co.* v. *F.P.C.,* 421 F.2d 17 (CA 6 1970).

The Commission orders:

For the reasons set forth above, Arkla's petition for declaratory order filed on September 11, 1975 in the above-entitled proceeding is denied.

By the Commission.
(SEAL)

Kenneth F. Plumb,
Secretary.

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EXHIBIT "F"

Filed in Evidence in Suit No. 225,699, January 10, 1977
UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

CERTIFICATION

I hereby certify that the attached 5 pages are true and correct copies of a document on file with the Commission.

Date: November 16, 1976

/s/ KENNETH F. PLUMB
Secretary

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

SMALL PRODUCERS

ARKANSAS LOUISIANA GAS COMPANY

v.

FRANK J. HALL, *et al.*

Before Commissioners: Richard L. Dunham, Chairman; Don S. Smith, John H. Holloman III, and James G. Watt

Docket No. RI76-28

ORDER CLARIFYING AND AMPLIFYING COMMISSION ORDER DENYING APPLICATION FOR REHEARING

(Issued November 8, 1976)

On June 30, 1976, Frank J. Hall, *et al.,* (Respondents) filed a Petition for Clarification and Amplification of the Commission's order dated June 4, 1976, whereby the Commission denied Arkansas Louisiana Gas Company's (ARKLA) petition for rehearing. On July 6, 1976, ARKLA filed a Limited Application for Rehearing, or, in the Alternative, Clarification, of the Commission's June 4 order.

ARKLA originally had sought a determination that the "favored nations" clause in its January 11, 1952, contract with Respondents was not triggered by certain royalty payments made to the United States Government by ARKLA. We held in our order issued March 8, 1976, that we would defer to the court to decide this contract issue.

The Commission by order issued July 30, 1976, granted rehearing for purposes of further consideration of the here-

inbefore mentioned applications of ARKLA and respondents.

Respondents request amplification of the Commission's order issued June 4, 1976, in regard to the maximum rates, for each year beginning in the fall of 1961 through the year 1972 which, if contractually authorized and if proper filing procedures had been followed, would have been approved by the Commission pursuant to its *"Other Southwest Area Rate"* Opinion Nos. 607 [1] and 607-A.[2] The respective area base rate ceilings for sales of natural gas under Opinion Nos. 607 and 607-A from Northern Louisiana by a producer with contractual authority who properly filed are:

Prior to January 1, 1965	From Jan. 1, 1965 Thru Sept. 30, 1968	From October 1, 1968 thru 1972
16.7¢ per Mcf at 15.025 psia	18.6¢ per Mcf at 15.025 psia	20.6¢ per Mcf at 15.025 psia [3]

Where, as here, the sale contract provides for the sale of natural gas at the wellhead, the ceilings set forth above for such sale are subject to a 1.0¢ per Mcf downward adjustment for wellhead delivery.

Respondents also request that the Commission set forth and state:

> "I. That the Federal Power Commission pursuant to the Natural Gas Act, has not, since September, 1961 to the present date, regulated, limited or restricted the rates or prices which the respondents herein, if con-

[1] 46 FPC 900

[2] 47 FPC 99

[3] This rate is subject to adjustment for new or increased taxes on or after Otober 29, 1971.

tractually authorized, could and should have been paid for their liquid hydrocarbons, gasoline, and plant products extracted from the wet or casinghead gas and which were sold to Arkansas Louisiana Gas Company pursuant to the January 11, 1952 'Most Favored Nation' contract and the related Arkansas Louisiana Gas Company division order contracts."

While the Commission has jurisdiction over natural gas containing *liquefiable* hydrocarbons, it has no jurisdiction over liquids after their removal from the gas stream.[4] Consequently, if a contract provides for severable payments for the natural gas, including the liquefiable hydrocarbons contained therein, and the subsequently removed liquids, we would have jurisdiction over the sale of the natural gas containing the liquefiable hydrocarbons, but no jurisdiction over the sale of the liquids. But, there is a basic contract question presented with respect to the subject sale as to whether the respondents are entitled under their sales contract to a price for the products removed by ARKLA from the natural gas purchased from respondents which is severable from the price for natural gas sold under such contract. Since, as we indicated in our order issued March 8, 1976, herein, it is appropriate for a court to resolve contract questions pertaining to the sale of natural gas, it is clear that a court would also have jurisdiction to decide this contractual issue.

ARKLA in its application for rehearing has raised a question as to which respondent parties are covered by the small producer certificate issued in Docket No. CS73-323. The question is raised because those respondents who are covered by the small producer certificate are not required to make any rate increase filing for the period subsequent

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[4] *Mobil Oil Corporation* v. *Federal Power Commission*, 483 F.2d 1238 (CADC 1973).

to the filing of their small respondents who were issued small producer certificates are entitled to their coverage.

Commission records show that the following hold small producer certificates:

Certificate Holder	Docket No.	Cert. Issued Date	Cert. Effect Date
Frank J. Hall	CS73-323	3-30-73	10-19-72
W.E. Hall, Jr.		(Temporary)	
Mrs. Virgil J. Hall (Mrs. W.E. Hall, Sr.)			
James A. Noe	CS72-549	4-24-72	10-27-71
S.G. Myers, Jr. (Sidney G. Meyers, Jr.)	CS71-547	10-21-71	4-30-71

None of the other respondents in the above-entitled proceeding have applied for small producer certificates. However, all of the respondents, or their predecessors in interest, are listed in Exhibit "A" to the application in Docket No. CS73-323 as parties whose interests are intended to be covered thereby with respect to the sale formerly made under D.B. McConnell (Operator) *et al.,* FPC Gas Rate Schedule No. 4 and the related certificate issued in Docket No. G-3891. Accordingly, all of the Respondents involved here are covered by the small producer certificates with respect to sales formerly made under D.B. McConnell FPC Gas Rate Schedule No. 4. It is true that the parties listed in the exhibit to the application in Docket No. CS73-323 could not make any new sales. Only the certificate holders (i.e. Frank J. Hall, W.E. Hall Jr., and Mrs. Virgil J. Hall (Mrs. W.E. Hall, Sr.)) could make new sales under their small producer certificate But, this does not preclude the parties listed in the exhibit to the application from being covered by the small producer certificate with respect to existing sales specified in the application. Indeed, it would make little sense to require such parties, or their successors,

to file separate applications or to specifically join as applicants in the filed application in order to be covered by the application with respect to an existing sale. In our view the listing of the parties in the application was sufficient and there was no need for the successors of some of those interests to make any filings. This is consistent with Section 157.49(a)(3)(ii) of our regulations.

In addition to the aforementioned pleadings filed on behalf of respondents and ARKLA, the respondents filed an answer and response to ARKLA's "Limited Application of ARKLA for Rehearing, or, in the Alternative, Clarification." On July 12, 1976, ARKLA filed a Motion for Procedural Clarification of Section 1.9 of the Commission's Rules of Practice and Procedure. On July 23, 1976, ARKLA filed an answer to respondents petition for clarification and amplification. On July 28, 1976, ARKLA filed a response to respondents answer of July 19. On August 19 and 30, 1976, ARKLA filed protests stating its dissatisfaction with the procedural course followed by respondents in the filings of their pleadings of August 5 and 23. On August 26, 1976, respondents filed a protest pursuant to Section 1.10 of the Commission's Rules of Practice and Procedure.

We need not discuss the issues raised in the supplemental pleadings filed in the above-entitled docket number since the issues raised therein have no relevance to the matters previously discussed in this order.

The Commission orders:

The Commission's *Order Denying Application For Rehearing* issued June 4, 1976, in the above-entitled docket number, is hereby clarified and amplified as set forth in the body of this order.

By the Commission.

(SEAL)

Kenneth F. Plumb,
Secretary.

D-72

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

SMALL PRODUCERS

Docket No. RI76-28

ARKANSAS LOUISIANA GAS COMPANY

v.

FRANK J. HALL, *et al.*

Before Commissioners: Richard L. Dunham, Chairman; John H. Holloman III, and James G. Watt.

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 7, 1977)

On December 8, 1976, Arkansas Louisiana Gas Company (Arkla) filed an application for rehearing of the Commission's order issued November 8, 1976, in the above-entitled proceedings. That order clarified and amplified the Commission order issued June 4, 1976, whereby the Commission denied Arkla's petition for rehearing.

Arkla originally had sought a determination that the "favored nations" clause in its January 11, 1952, contract with Frank J. Hall, *et al.* (Respondents) was not triggered by certain royalty payments made to the United States Government by Arkla. We held in our order issued March 8, 1976, that we would defer to the court to decide this contract issue.

In its current petition, Arkla contends that the Commission erred in its November 8, 1976, order in holding that jurisdictional sales of natural gas by Respondents constitute small producer sales within the meaning of Section 157.40 of the Commission's Regulations under the Natural

Gas Act.[1] It is Arkla's position that only producers that have been granted small producer certificates qualify for small producer status for the purposes of Section 157.40 (a)(3).

In determining which producers are to be considered small producers we need only look at the definition of a small producer as set forth in Section 157.40(a)(1):

> A 'small producer' is an independent producer of natural gas as defined in § 154.91 of this chapter, who is not affiliated with a natural gas pipeline company and whose total jurisdictional sales on a nationwide basis, together with such sales of "affiliated producers" are not in excess of 10,000,000 Mcf at 14.65 p.s.i.a. during any calendar year.

Regardless of whether or not they file for their own small producer certificates, all Respondents who fall within the above-quoted definition are classified as small producers and are entitled to be covered by the certificate issued in Docket No. CS73-323 as fully set forth in the Commission order issued November 8, 1976.

If all small producers had to apply for their own small producer certificates, as Arkla suggests, then Section 157.40a(3)(ii) [2] would be meaningless except for large producer interests. Arkla's interpretation, moreover, is inconsistent with the Commission's statement in Order No. 308, 34 FPC at 1203, that "Where several small producers have interests in a single contract, we shall permit them to be covered by a single small producer certificate." In the instant case, since none of the Respondents herein were

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[1] 18 C.F.R. § 157.40.

[2] Under that section "small producer sales" include "sales of all interests under a small producer's contract if producers not qualifying as small producers have interests which in the aggregate are no greater than 12½ percent."

large producers, the blanket certificate issued to Hall also covered these other interest owners listed in the application with respect to sales formerly made under D. B. McConnell FPC Gas Rate Schedule No. 4. With one exception, the interest owners under Hall's certificate held interests of less than 12½ percent and as a result were covered under the 12½ percent limitation in Section 157.40a(3)(ii).[3] The one who exceeded the 12½ percent limitation was a small producer and thus his interest was also covered under that same section.

The Commission finds:

Arkla's application for rehearing presents no facts of legal principles that would warrant any change in or modification of the Commission's order issued November 8, 1976.

The Commission orders:

The application for rehearing filed by Arkla on December 8, 1976, is hereby denied.

(SEAL)

Kenneth F. Plumb,
Secretary.

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[3] The use of the term "aggregate" in that section refers to the situation where the interest of a large producer varies from lease to lease under a particular contract, thus requiring the use of an average in determining whether a large producer's interest exceeds the 12½ percent limitation.

TWENTY-SIXTH JUDICIAL DISTRICT COURT
OF LOUISIANA
IN AND FOR THE PARISH OF BOSSIER

No. 41,599

FRANK J. HALL, ET AL.

vs.

ARKANSAS LOUISIANA GAS COMPANY

DECLINATORY EXCEPTION OF IMPROPER VENUE

Filed September 6, 1974

NOW INTO COURT, through undersigned counsel, comes the defendant, ARKANSAS LOUISIANA GAS COMPANY, appearing solely for the purpose of this exception, and excepts to plaintiffs' petition on the following grounds:

The venue in which this suit is filed is improper because exceptor is a Delaware corporation which is licensed to do business in this state and has its principal place of business in Louisiana, in Caddo Parish. As disclosed by plaintiffs' petition, this suit is based upon an alleged breach of contract by defendant and therefore does not fall within any of the exceptions provided in the Code of Civil Procedure to the general rule that a foreign corporation licensed to do business in this state shall be sued in the Parish where its principal business establishment in this state is located.

WHEREFORE, defendant prays that this exception be maintained and that there be judgment herein in favor of defendant and against plaintiffs, and that plaintiffs' demand be dismissed at their cost.

BLANCHARD, WALKER, O'QUIN & ROBERTS

By /s/ NEILSON S. JACOBS
Neilson S. Jacobs

By /s/ CLYDE W. THURMON
Clyde W. Thurmon

Fifth Floor, First National Bank Building,
Post Office Drawer 1126,
Shreveport, Louisiana 71163.
Attorneys for Defendant.

FIRST JUDICIAL DISTRICT COURT OF LOUISIANA
IN AND FOR THE PARISH OF CADDO

Number 225,699

FRANK J. HALL, ET AL.

vs.

ARKANSAS LOUISIANA GAS COMPANY

RECONVENTIONAL DEMAND OF ARKANSAS LOUISIANA GAS COMPANY, DEFENDANT IN THE PRINCIPAL ACTION

The petition in reconvention of ARKANSAS LOUISIANA GAS COMPANY, defendant in the principal actions in this suit, herein sometimes referred to as "Arkla," with respect represents that:

1.

This action is brought by Arkla against the plaintiffs in the principal suit, namely:

FRANK J. HALL, a resident of Caddo Parish, Louisiana;

W. E. HALL, JR., a resident of Beauregard Parish, Louisiana;

MRS. W. E. HALL, SR., a resident of Caddo Parish, Louisiana;

THE H. M. HARRELL TESTAMENTARY TRUST, represented by Mr. Carlyle W. Urban, Testamentary Trustee;

JAMES E. HARRELL, a resident of Houston, Texas;

JOHN K. HARRELL, SR., a resident of Utopia, Texas;

ASA BENTON ALLEN, a resident of Dover, Massachusetts;

SIDNEY G. MYERS, JR., a resident of Caddo Parish, Louisiana;

W. O. COCHRAN, a resident of Bossier Parish, Louisiana;

THOMAS F. PHILYAW, a resident of Caddo Parish, Louisiana;

MRS. ELAINE ALLEN, a resident of Winnfield, Louisiana;
JAMES A. NOE, a resident of Monroe, Ouachita Parish, Louisiana;

D. B. McCONNELL, a resident of Shreveport, Caddo Parish, Louisiana;

MRS. ELVA L. WEISS, a resident of New Orleans, Orleans Parish, Louisiana; and

SOL KAPLAN and the NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS, Docket No. 498-163, Parish of Orleans, State of Louisiana;

referred to herein as defendants in reconvention.

2.

Arkla's object in the suit is to obtain a judgment and decree declaring its rights against defendants in reconvention, for the past and for the future, with respect to the contract, hereinafter described and referred to, between Arkla and defendants in reconvention, with particular reference to the effect of Arkla's payments of royalties to its lessors under oil and gas leases covering lands in the Sligo Gas Field, Bossier Parish, Louisiana; and to resolve the dispute, hereinafter described, which has arisen between Arkla and defendants in reconvention with respect to the application of that contract to the facts hereinafter alleged.

3.

On or about January 11, 1952, Arkla and defendants in reconvention, or their predecessors, together with other persons, entered into a written agreement providing for the

purchase by Arkla from the other parties to the contract of natural gas produced in the Sligo Gas Field, Bossier Parish, Louisiana; a copy of that contract (herein referred to as the "Agreement") is attached to plaintiffs' original petition in this suit, was admitted by Arkla's answer, and is now incorporated by reference in this petition in reconvention.

4.

In early 1961 Arkla acquired by assignment from Union Producing Company, the original lessee, an undivided 15% interest in and to a certain oil, gas and mineral lease from the United States of America to Union Producing Company covering lands described as Sections 1, 2, 3 and 4, Township 17 North, Range 12 West, Louisiana Meridian (called "Parcel No. 3"), the lease being identified on the records of the Department of the Interior of the United States, which has administration thereof, as Lease Serial BLM-A-054491 (Louisiana). A copy of this lease, which is hereinafter sometimes referred to as the "Government lease," and which affects lands in the Sligo Gas Field, Bossier Parish, Louisiana, is attached to and made part of this petition in reconvention as Exhibit A.

5.

Arkla and its co-owners of the Government lease have developed the lands subject thereto for production of minerals and since a time in 1961 have produced from wells on the land substantial quantities of natural gas containing condensate and other hydrocarbon liquids.

6.

Arkla owns and operates a gas gathering system and a natural gasoline extraction plant in the Sligo Field and area, and owns and operates trunk pipelines connected with the outlet of its gasoline plant and used for transporting

processed gas ("residue gas") therefrom to its general pipeline system from which gas is distributed and sold in various places in North Louisiana, East Texas, Arkansas and Oklahoma.

7.

Arkla takes in kind at or near separators at the wells all of its 15% share of the gas produced from the wells on lands covered by the Government lease; previous to Arkla's receipt of the gas, it has been processed through separators which remove the readily condensable liquids and this condensate is sold by the lease operator (MRT Exploration Company) for the account of the owners of the lease, including Arkla. Arkla takes no gas produced on lands covered by the Government lease other than its 15% share of the production; the balance is taken by or for the account of its co-owners of the lease.

8.

Arkla's 15% share of the gas produced from the wells on the Government lease, after receipt by it as described in the preceding paragraph, is taken through Arkla's gathering system to its gasoline plant where the condensable hydrocarbon liquids are extracted; this process reduces to some extent the volume of the gas and requires a certain amount of the incoming stream for fuel to operate the extraction plant. At the outlet of the gasoline plant the residue gas is placed in Arkla's pipeline and transported and sold, as described in Paragraph 6 above.

9.

There has been, since the beginning of production on the Government lease no substantial change in the physical operation as described in the three preceding paragraphs of this petition. Under the provisions of the Government lease, the lessor, the United States of America, is entitled

to a royalty of 16⅔% of the amount or value of production obtained and saved from the leased lands; and under a further provision of the lease, Arkla is obligated "at the option of the lessor to pay the respective royalties herein provided for in value or in amount of production." The lessor, the United States of America, has never exercised its option to require payment of royalties from Arkla under the Government lease in amount of production, and Arkla, beginning with the first royalty payment and continuing without interruption to the present time, has paid to the United States under the lease its share of the royalties due thereunder based on the value of the gas and the gasoline and other products extracted from the gas.

10.

Under the provisions of the Government lease and the Code of Federal Regulations, Title 30, the United States of America, through the Department of the Interior, Geological Survey, expressly reserved the right to "establish reasonable minimum values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other products obtained from gas; due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters and, whenever appropriate, after notice and opportunity to be heard."

11.

Under the right so reserved by the lessor, as described in the preceding paragraph, the Department of the Interior, by notice in the form of letters to Arkla dated March 27, 1962, December 4, 1973 and May 17, 1974, of which copies are attached to and made part of this petition in reconvention as Exhibits B, C and D, respectively, fixed the

following amounts as the value of Arkla's share of the production from the Government lease.

Per MCF of residue gas production, at a pressure base of 15.025 psia	\$0.117432	Until January 1, 1962
Per MCF of residue gas production, at a pressure base of 15.025 psia	\$0.130252	Until January 1, 1967
Per MCF of residue gas production, at a pressure base of 15.025 psia	\$0.140503	After January 1, 1967
Per MCF of residue gas production, at a pressure base of 15.025 psia	\$0.26	Effective May 1, 1974.

By the letter of December 4, 1973 (Exhibit C), fuel and shrinkage deductions at the Sligo Plant were limited to 4½% of the wet gas volumes received.

12.

Arkla has paid royalties to the United States, under the Government lease, calculated as being 16⅔% of the value of its 15% of the production from the Government lease, determined, as required by the lessor, at the unit values set forth in the preceding paragraph, including value of extracted products at the price at which sold by Arkla. Arkla's royalty payments to the United States under the Government lease in a number of months have exceeded, on the basis of such determined values per unit of gas produced, the price paid by Arkla to defendants in reconvention under the Agreement.

13.

Defendant has made no purchase from any person of gas produced from a well or wells located in the Sligo Gas Field

of Bossier Parish since the date of the Agreement at a price higher than is provided by the Agreement to be paid for gas delivered by defendants in reconvention under the Agreement.

14.

Notwithstanding that Arkla's payment of royalties to the United States under the Government lease or to any other parties as royalty on gas produced in the Sligo Gas Field are not, as a matter of law or fact, purchases of gas, defendants in reconvention have brought this suit claiming that because of such royalty settlement or settlements Arkla has incurred substantial liabilities to them as additional price for the gas purchased from them under the Agreement. Arkla is entitled to have put at rest, for past transactions and for the future, the disagreement which exists between defendants in reconvention and Arkla, and which has been asserted in the principal action.

15.

The filing of this reconventional demand will not retard the progress of the principal action, inasmuch as defendants in reconvention are still proceeding, as plaintiffs, in discovery; and Arkla, pending completion of their discovery proceedings, has not yet begun the discovery necessary to its preparations for trial.

WHEREFORE, Arkansas Louisiana Gas Company, plaintiff in reconvention, prays that defendants in reconvention be served with copies of this reconventional demand and that, after trial, there be judgment on this reconventional demand in its favor and against defendants in reconvention, named in paragraph numbered 1 of this petition in reconvention, adjudging and decreeing as follows:

(1) that payments by Arkla to the United States of America, since 1961 to the present, of royalties due by Arkla to the United States under Lease Serial BLM-A-

054491 (Louisiana) calculated on the value of oil and gas produced by Arkla from the land covered by said lease, as determined by the United States Department of the Interior, Geological Survey, in fact and in law have been payments of royalty under the lease and have not been payment of the price for the purchase of gas;

(2) that payments of royalties to the United States of America in the manner described in the preceding paragraph (1) will not in the future amount, in fact or in law, to payment of the purchase price for gas and oil; and

(3) that payments by Arkla to third persons of royalties under oil, gas and mineral leases held by Arkla on lands in the Sligo Gas Field, Bossier Parish, Louisiana, where such leases provide for royalty payments based on value of gas produced and have been calculated and paid on that basis by Arkla, have not been in the past, and will not be in the future, payments of the purchase price of gas produced in the Sligo Gas Field, Bossier Parish, Louisiana.

(4) Arkla further prays for all orders and decrees necessary, for costs, and for general and equitable relief.

Shreveport, Louisiana, March 14, 1975.

Neilson S. Jacobs
Marlin Risinger, Jr.
Robert Roberts, Jr.

BLANCHARD, WALKER, O'QUIN & ROBERTS
First National Bank Building
Post Office Drawer 1126
Shreveport, Louisiana 71163

By /s/ ROBERT ROBERTS, JR.
Robert Roberts, Jr.

Attorneys for Defendant and Plaintiff in Reconvention

FIRST JUDICIAL DISTRICT COURT OF LOUISIANA
IN AND FOR THE PARISH OF CADDO

Number 225,699

FRANK J. HALL, ET AL.

vs.

ARKANSAS LOUISIANA GAS COMPANY

ORDER

Endorsed Filed March 14, 1975

It appearing that the filing of the foregoing reconventional demand will not retard the progress of the principal action, leave is hereby granted for its filing.

Shreveport, Louisiana, March 14, 1975.

/s/ FRED C. SEXTON, JR.
JUDGE, First Judicial District Court
in and for Caddo Parish, Louisiana.

FIRST JUDICIAL DISTRICT COURT OF LOUISIANA IN AND FOR THE PARISH OF CADDO

Number 225,699

FRANK J. HALL, ET AL.

VS.

ARKANSAS LOUISIANA GAS COMPANY

DEFENDANT'S MOTION FOR SEPARATE TRIAL OF CERTAIN OF THE ACTIONS CUMULATED IN THIS SUIT

Now INTO COURT, in the above entitled and numbered cause, by its counsel, comes ARKANSAS LOUISIANA GAS COMPANY, made defendant herein, and respectfully shows:

1.

This motion is filed to request the Court to order separate trials of plaintiffs' action herein for a declaratory judgment and defendant's reconventional demand, on the one hand, and plaintiffs' actions for damages for breach of contract and an accoutning, on the other. The grounds of this motion are as follows:

2.

Plaintiffs have cumulated in this suit, as appears from the prayer of their petition, an action for a declaratory judgment (Subdivision II of prayer of petition), an action for damages for breach of contract (Subdivision III of prayer of petition), and an action for an accounting (Subdivision IV of prayer of petition); and defendant has filed herein a reconventional demand seeking a declaration of rights as between plaintiffs and defendant under the contract between them alleged in plaintiffs' petition.

3.

Defendant does not assert that the cumulation of actions existing in this judicial proceeding is improper; but it shows that the evidence necessary for the Court's decision upon the application of the gas sales contract alleged by plaintiffs and admitted by defendants, to the facts with regard to defendant's royalty settlements under the United States Government lease also alleged in plaintiffs' petition, is relatively simple and involves principally legal rather than factual questions. Whereas, plaintiffs' claim for damages and demand for an accounting would involve evidence on, and determinations by the Court as to, the details of each monthly settlement between plaintiffs and defendant since early 1961, and recalculation of the prices in such settlements in accordance with plaintiffs' version of their rights, namely, it would require repricing each monthly settlement of each plaintiff in accordance with royalty settlements under the Government lease.

4.

Only if plaintiffs prevail in their interpretation of their rights under the contract would the monumental accounting described above be necessary. It is obvious that a determination of whether or not defendant is liable for additional prices under the contract, and the measure of that liability, prior to the trial of the accounting here sought, would simplify the proceedings in this cause, would permit a more orderly disposition of the case, and would be otherwise in the interest of justice; and that therefore a separate trial of plaintiffs' request for declaratory relief and defendant's reconventional demand should be ordered by the Court as permitted by Code of Civil Procedure, Articles 465 and 1038.

Wherefore, defendant prays that the Court enter an order herein for the separate trial of plaintiffs' demand for a declaratory judgment and defendant's reconventional

demand, on the one hand, and of plaintiffs' demand and an accounting, on the other.

For all orders and decrees necessary and for general and equitable relief.

Dated: Shreveport, Louisiana, March 14, 1975.

Neilson S. Jacobs
Marlin Risinger, Jr.
Robert Roberts, Jr.

Blanchard, Walker, O'Quin & Roberts
First National Bank Building
Post Office Drawer 1126
Shreveport, Louisiana 71163

By /s/ Robert Roberts, Jr.
Robert Roberts, Jr.

Attorneys for Defendant

CERTIFICATE

I Hereby Certify that a copy of the above and foregoing motion has this day been served by United States Mail, postage prepaid, upon M. James Fleet Howell, counsel of record for plaintiffs, at his address of record in this proceeding.

Shreveport, Louisiana, March 14, 1975.

/s/ Robert Roberts, Jr.
Robert Roberts, Jr.